Public Utilities

FORTNIGHTLY

April 1, 1937

PUBLIC UTILITIES REPORTS, INC.
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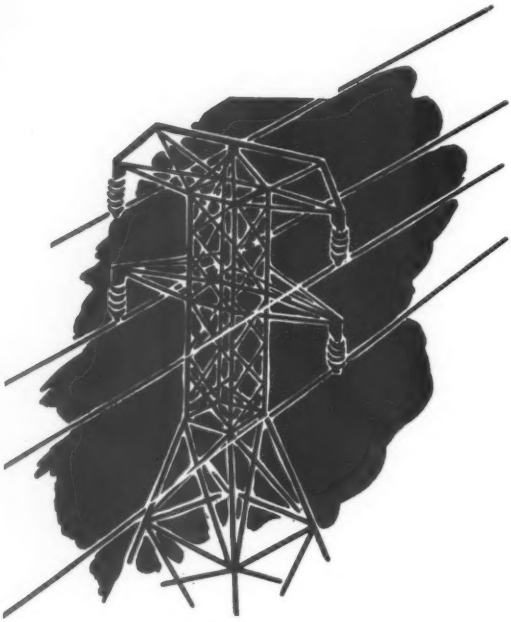

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Editor—HENRY C. SPURR
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Contributing Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XIX *April 1, 1937* NUMBER 7

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

As most of his admirers well remember, the late and great English writer Gilbert K. Chesterton had quite a flair for the piquant paradox. He had such perverse skill in turning our wits topsy-turvy with seeming naturalness and grace that a cynical critic once claimed the portly Chesterton could prove himself underweight by every known method except a weighing scales.

THE opening article in this issue by ARTHUR HUNTINGTON may at first glance strike some readers as Chestertonian in its approach. The very title, "Is the Moneyed Group behind Public Ownership of Utilities?" raises such a startling insinuation that it challenges further attention.

NEVERTHELESS, MR. HUNTINGTON seriously suggests that, under the prevailing practice of exempting government securities from taxation, the real moneyed interests (whoever they are) have taken increasing refuge in such secure, tax-exempt securities. Indeed, so keen has become the competition among these "economic royalists," according to MR. HUNTINGTON, that they are hard put to find enough government securities to go around. So, therefore, in order to prevent the demand from driving down the interest rate to such an extent as to cancel the advantage of tax exemption, it becomes necessary to dig up opportunities for more government indebtedness (and new bond issues). The easy answer is government ownership of utilities.

OF course, an obvious objection to MR. HUNTINGTON'S rather unique line of reasoning might result from a comparison of the roster of the better known advocates of public ownership with a similar list of its critics. It would probably be found that a good many more distinguished members of the upper bracket circle appear on the second list than the first. Is it possible that this plutocratic quest for safe and franked securities has resulted in a conspiracy so subtle that the conspirators put their golden eggs in one basket and their silk hats in the other?

MAYBE the explanation lies in the distinction between active industrialists and the less ambitious heirs of great fortune. Naturally the DuPonts, Rockefellers, and so forth, with private business enterprises of their own to finance, are not as keen to have government agencies grab all the money on the market as the silverspoon fraternity who may be just out for the financial ride. Again, many a substantial citizen is opposed to socialism on general principles, but approves of public ownership "in certain local cases" (as long as it doesn't directly affect his own business). But enough of this editorial speculation. The best plan would be to read MR. HUNTINGTON'S article and then try to figure it out for yourself.

MR. HUNTINGTON, who is well known in the electrical industry as a public relations official of the Iowa Electric Light & Power Company, is a graduate Mechanical Engineer from Ohio State University ('99). After early experience in that profession with the Westinghouse Electric Manufacturing Company, he turned his attention to electric utility operations in general and municipal ownership in the Middle West in particular. He was president of the American Society of Agricultural Engineers in 1934 and is well known for his studies on rural electrification.

OUR second article deals with a problem that is getting an increasing amount of attention of late from the Federal Securities and Exchange Commission and others. Several weeks ago the commission, in the course of passing on an electric utility's application for the registration of certain security issues, split 3 to 2 on the proposition of whether closed bidding on utility issues by financial promoters having a substantial interest or influence within the corporation was a bar to the approval of the registration (where there was evidence to indicate that the financier made

ARTHUR HUNTINGTON

He suspects the public ownership movement of economic royalism.

(SEE PAGE 403)

somewhat more than average profit on the deal).

THE majority of the SEC thought the relationship improper but approved the petition with the hope that the resulting publicity might discourage future abuse from "inside financing" practices. The minority, however, felt the best way to discourage the practice in question was to refuse registration, and hinted that compulsory competitive open bidding might not be a bad solution.

SINCE that particular case, several other financing incidents, some of them involving issues of public utility corporations, have served to throw the spotlight on this idea of compulsory competitive bidding. It is not exactly a new idea; in fact, several jurisdictions in this country have already adopted it.

RECALLING the old saying to the effect that the best proof of the pudding is in the eating, ye editors promptly dispatched one of our ace writers on financial matters to check up on the open competitive bidding situation in New England and the District of Columbia, where the system has been in actual operation. The writer in question is ERNEST R. ABRAMS, who should by this time be no stranger to FORTNIGHTLY readers. MR. ABRAMS took two weeks to "look over" the situation and came back shaking his head. He had spaded up enough raw material for a small book. How was he going to boil it down to a conventional magazine article?

WE were very stern with MR. ABRAMS. What did we want with a book, we asked? (Besides, most FORTNIGHTLY readers already have a book.) After some dickering we finally settled with our industrious contributor for two fairly fat articles to be run in consecutive instalments. The first part appears in this issue (beginning page 414), and the second will probably appear in our next.

BUT bear in mind, this study is the fruit of a number of conferences, interviews, luncheons, etc., with bankers, brokers, and other proverbially nontalkative gentry, who broke down and told all to our contributor. MR. ABRAMS, by the way, has become consultant on utility matters for *The Financial Reporter* since his work last appeared in these pages.

WHEN natural gas was first discovered and developed for service in the United States (Fredonia, N. Y., 1821), there came into existence the first difficulties of utility rate structure as we know it today. True, the older waterworks systems had long before struggled with distribution expense and even had some demand worries; and, of course, carriers have sold their service by the length of the trip through the ages. But when the early natural gas operators piped their supply to their neighbors' dwellings and charged so much "rental" per burner tip regardless of the amount used, America had a utility rate problem right in her lap.

ERNEST R. ABRAMS

Open bidding! A great trick if it works. But has it?

(SEE PAGE 414)

SINCE then the vastly increased usage and types of usage of gas, electricity, water, and telephone service have made the utility rate expert's job much more than a sinecure. In this issue (beginning page 422) ELLSWORTH NICHOLS, of our editorial staff, raises the question of whether utility charges can be varied with changing conditions.

SPEAKING of changing conditions, our office statistician, who has been quite upset by our present constitutional "crisis," checked up on the length of time it took to get ratification for each amendment to our Constitution. General average for all twenty-one amendments was twenty and one-half months. The Sixteenth amendment (income tax) took by far the longest—forty months. The Twelfth and Twenty-first (repeal) were tied for speed—nine and one-half months. The other amendments all ran between eleven and twenty-seven months. Is that so very long to wait? However, President Roosevelt with four years behind him and nearly that much more ahead of him wants action *"now."* In truth, considering the nature of his proposal it might even be said the President wants action *nunc pro tunc,* as the lawyers say.

THE next number of this magazine will be out April 15th.

The Editors

Many a utility has hung this sign on the door after checking into Remington Rand's Unit Plan of Bookkeeping.

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3 Balance all unpaid service accounts on the regular cycle basis.

4 Check delinquent notices with Ledger record.

5 Prepare arrears to be brought forward on new bills by machine operators.

6 Furnish information in connection with duplicate bill requests.

7 Furnish information in connection with high bill complaints.

8 Furnish the necessary information in connection with any inquiries regarding the account.

9 Handle all final bill accounting.

10 Handle all filing of paid and transferred Ledger records.

OK.. it's from Remington Rand

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 113–176, from 17 P.U.R.(N.S.)

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—MONTAIGNE

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Newspaper columnist.

"Whiskey and politics should never be mixed."

HOWELL WRIGHT
Cleveland attorney.

"Money invested in real regulation will pay handsome dividends."

MAURY MAVERICK
U. S. Representative from Texas.

"Just bear in mind we have just as much sense as our forefathers."

VICTOR WEYBRIGHT
Managing Editor, Survey Graphic.

"Our private utilities have not increased production and lower prices except under direct or indirect pressure."

C. O. RUGGLES
Professor of Public Utility Management, Harvard Graduate School of Business Administration.

"We have spent too much time and funds on the valuation of public utility properties and too little on a searching analysis of operating costs."

FRANK R. KENT
Newspaper columnist.

"Thus, to pack a court in order to accomplish a purpose however good, is an immoral act *per se* and, therefore, inadmissible under any circumstances."

J. N. (DING) DARLING
President, General Wild Life Federation.

"If nature's pantry had been wisely guarded we would not today have the misery and disaster that have come in the wake of dust bowls, soil erosion, and mighty floods."

RAYMOND CLAPPER
Scripps-Howard columnist.

"The lawyers, as private citizens and also as officers of the court, have not seemed to be helpful in solving our difficulties but, on the contrary, to have aggravated them."

HERBERT H. LEHMAN
Governor of New York.

"The time has passed when the business man, the lawyer, the teacher, and other leaders of thought can insist on confining their efforts to their particular activities or tasks."

BERNARD W. LYNCH
President, Standard Gas and Electric Company.

"When I think of the many obstacles the public utility industry has overcome in the comparatively short period of its existence and I see the wonderful spirit of service displayed by the men and women comprising the personnel of the companies, I am inspired with enthusiasm for its future, for after all it is the human element in business and industry that makes for progress and achievement."

T. R. B.
Washington correspondent, The New Republic.

"It is now reported that the (St. Lawrence) treaty will be brought up in the Senate during the present session, and that all the force of the administration will be marshaled behind it."

ARTHUR E. MORGAN
Chairman, Tennessee Valley Authority.

"We should do well to reserve some of our energies from fighting over the power issue, and use them in trying to solve it in such a way as also to make a contribution to good government."

PAUL A. WALKER
Member, Federal Communications Commission.

"I would not take full credit for all those (telephone rate) reductions. I just say to you that those reductions have come since the investigation and they were not coming along before the investigation."

SAMUEL B. PETTENGILL
U. S. Representative from Indiana.

"Petroleum, along with such recognized public utilities as railroads and electricity, is in the front line trenches of private enterprise. The zero hour for these industries may be no further distant than ten years."

PAUL W. WARD
Washington correspondent, The Baltimore Sun.

"Every practitioner before the Supreme Court begins his argument with an unspoken assumption that nothing he can say will turn certain of the justices there against his client or win others over to his side."

FRANK W. HERRING
Editor, Public Works Engineers' News Letter.

"When the water pressure went off (during the recent flood), the effect was not to be measured merely by the inconvenience to the person who wanted a glass of water and got nothing but a sigh from the opened tap."

GEORGE W. NORRIS
U. S. Senator from Nebraska.

"I look ahead to getting permanently out of the depression. However this dispute over the court's powers is settled, I believe it must and will be settled in a way to make possible a more equitable distribution of wealth."

PHILIP H. GADSDEN
Vice President, The United Gas Improvement Company.

"The public utility industry welcomes any opportunity to bring before the public the real issue involved in municipal ownership and political management of an industry that affects the pocketbook of every voter and citizen."

FRANKLIN D. ROOSEVELT
President of the United States.

"The language of the decisions already rendered and the widespread refusal to obey the law, incited by the attitude of the courts, create doubts and difficulties for almost everything else for which we have promised to fight —help for the crippled, for the blind, for the mothers— insurance for the unemployed — security for the aged — protection of the consumer against monopoly and speculation — protection of the investor — the wiping out of slums — cheaper electricity for the homes and on the farms of America."

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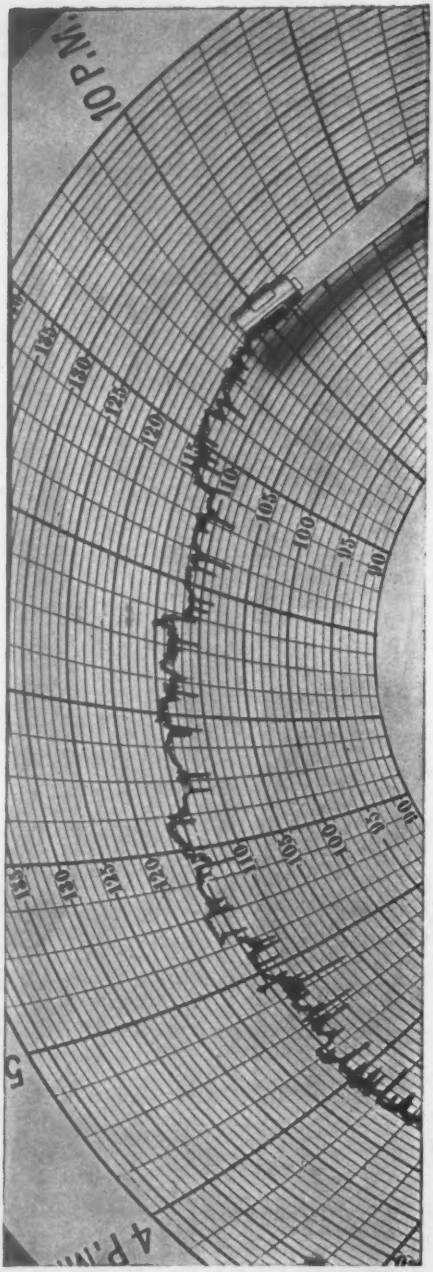

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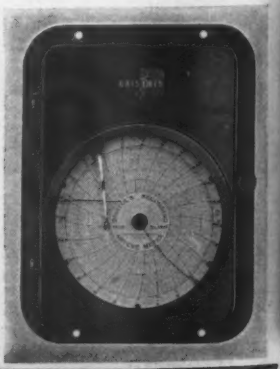
Left: Section of Bristol's Ammeter Chart.

Right: Bristol's Recording Ammeter. Model 640M.



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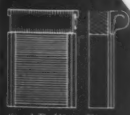

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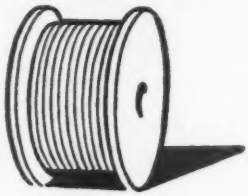

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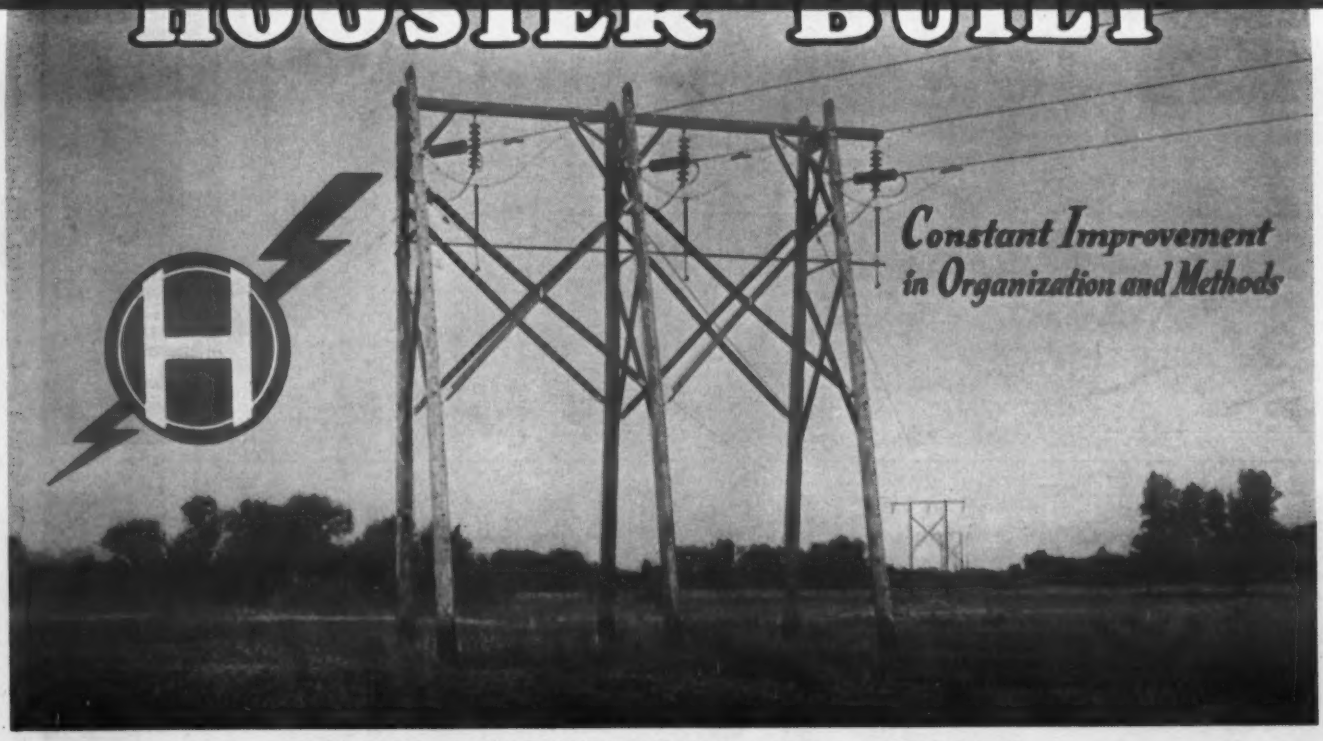

Six Pole Angle Structure Used by Platte Valley Public Power & Irrigation District in Nebraska.

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THE CLEVELAND TRENCHER COMPANY

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The CLEVELAND BABY DIGGER Model 95

Utilities Almanack

APRIL

1	Th	¶ *American Water Works Association, Florida Section, concludes meeting, Ocala, Fla., 1937.*
2	F	¶ *Pacific Coast Gas Association, Sales & Advertising Section, ends convention, Los Angeles, Calif., 1937.*
3	Sa	¶ *American Water Works Association, Montana Section, will hold session, Lewiston, Mont., April 19–22, 1937.*
4	S	¶ *Missouri Association of Public Utilities will convene for annual session, Excelsior Springs, Mo., April 21–23, 1937.*
5	M	¶ *American Water Works Association, Kentucky-Tennessee and Southeastern Sections, starts joint meeting, Chattanooga, Tenn., 1937.*
6	Tu	¶ *Iowa Independent Telephone Association opens convention, Des Moines, Iowa, 1937.*
7	W	¶ *Chamber of Commerce of the U. S. A. will hold convention, Washington, D. C., April 26–29, 1937.*
8	Th	¶ *Pacific Northwest Regional Planning Commission convenes for session, Boise, Idaho, 1937.*
9	F	¶ *Edison Electric Institute, Technical Committees, will convene, Chicago, Ill., May 3–7, 1937.*
10	Sa	¶ *Pennsylvania Gas Association will hold convention, Sky Top, Pa., May 4–6, 1937.*
11	S	¶ *American Gas Association, Natural Gas Department, will hold session, Kansas City, Mo., May 10–15, 1937.*
12	M	¶ *American Gas Association opens distribution conference, Washington, D. C., 1937.* ¶ *Mid-West Gas Association begins convention, Waterloo, Iowa, 1937.*
13	Tu	¶ *Wisconsin Locally Owned Telephone Group starts meeting, Madison, Wis., 1937.* ¶ *Wisconsin State Telephone Association begins convention, Madison, Wis., 1937.*
14	W	¶ *American Water Works Association, Canadian Section, opens convention, Montreal, Canada, 1937.*

Courtesy of the Philadelphia Electric Company

Night at Conowingo

Public Utilities

FORTNIGHTLY

VOL. XIX; No. 7 APRIL 1, 1937

Is the Moneyed Group behind Public Ownership of Utilities?

We know what the public ownership movement stands for. We also know the general run of argument for or against it on its merits. But do we know why public ownership as an organized political objective exists—why it is here today and was not here yesterday? Is it high rates or other alleged abuses of private management, or is it something more fundamental and less popularly understood? It is from this more or less original approach that the author of this article discusses what he believes is, in large part, really at the bottom of the present wave of public ownership agitation.

BY ARTHUR HUNTINGTON

WITHOUT knowing or caring to investigate and learn facts, the man of the street has come to regard utilities as crushing monopolies, which have levied heavy tolls on the people, in order that rich men may enjoy profits on watered stock until the consumers have risen up in protest and are accepting municipal ownership and Federal and state meddling and attack as the way out.

In the opinion of this author, nothing is farther from the truth. Municipal ownership and government in business are not in the public interest. There have been instances when poor service or high rates or bad management has caused attack by the consumers, but such cases have been the exceptions rather than the rule. Generally speaking, the public knows nothing of its grievances or that there is to be an attack until the propaganda of the promoter agitator begins to take effect. Without going into detail or attempting even to enumerate the cause, I will name only two leading classifications of government ownership advocates.

Night at Conowingo

Courtesy of the Philadelphia Electric Company

First of all, there are people who by experience have learned the advantage of owning and the benefits that go with the ownership of municipal, state, and Federal bonds, which in addition to enjoying many tax exemptions are an underlying first mortgage on all of the property and income in the taxing districts (with both principal and interest collected and delivered at government expense). The ownership of such securities frees the owners[1] from many of the hazards that go with the ownership of property or which must be accepted in business.

The principal fiscal agent of this group is the "social-minded" investment banker; too often investment bankers of the highest type lend their aid to the developing of these preferred securities. The principal assistants are professional promoters, manufacturers of equipment, contractors, professional labor agitators, prominent citizens looking for local glory, and a few other miscellaneous types. The politician is a secondary figure. He enters the picture only after the public has shown a willingness to endorse the venture or has actually authorized it with votes.

IN recent years a new element has appeared. They may call themselves "socialists," "communists," or other titles indicating politico-economic discontent; but, in any event, these groups have become active (among other things) in forcing government into business; at the present time these groups are highly organized and are a potent factor in partisan politics. The objectives of the socialist are entirely the opposite of the money group. They hope, through government, to destroy all business; in so doing to establish complete social distribution of capital wealth and income.

In spite of the natural antagonism, which should exist between these two major classifications (1) those seeking personal benefits; (2) those seeking social readjustment, they are for the time being working together. The first, or money group, hopes to create a condition whereby its social and economic security will be guaranteed by the pledging of the first fruits of tax levies for the security of bonds which they own. The second class—the socialists—assure us that government in business is just one step along the road to the ideal communistic state, where all property will be owned by the state and all business and social activities will be directed by a central benevolent planning body with autocratic and despotic authority.

The electric utilities are now situated within plain range of the cross fires of both of these camps.

As yet America is not in sympathy with communism, but she is making progress along the road traveled by other states that ends up on the left bank. On the other hand, with equal smugness, people scoff at the idea of developing an American royalty, scarcely realizing that in a relatively few years we have set the stage and are now creating the most favored and care-free royalty the world has yet known.

WHEN America inaugurated a system of government based on the assumption that "all men are created free and equal," the European econo-

[1] In a former article, PUBLIC UTILITIES FORTNIGHTLY, May 23, 1935, Mr. Huntington gave his reasons for his belief that municipal utility plants are, generally speaking, subsidized by indirect methods of levying on tax funds.

mists and statesmen rightfully began to speculate as to the length of time it would last, what would be the trend of development, and the final status of workers, commoners, and royalists.

They did not for a moment assume that the new republic would be able to exist as a democracy. Knowing the democracies of the past, they merely expected that sooner or later an "irresponsible and unregulated populace," excited by damagogues and radicals, would bankrupt the nation or bring it to such a pass that a dictator, always the forerunner of a monarch, would have to assume control. The particular interest of these early critics centered in the type of royalty and the means which would be developed whereby a group of people could learn to live at public expense and find a way whereby those privileges could be passed on to their heirs from generation to generation.

For more than a century they assumed that an American brand of royalty, similar to that which has existed in the past, would be built around large land holdings. But America dispensed with laws whereby property could be entailed and passed on to a surviving head of the family.

For approximately seventy - five years foreign skeptics looked to our industrial empires to furnish the basis of this new royalty. Yet, experience has shown that man has not yet devised a way whereby he can pass his business talents on to his heirs.

However, with the collapse of land values in 1921 and the business debacle of 1929, we now find that we have gradually developed a system of finance which shows promise of being the nucleus around which the long expected American royalty can be built.

Just what is royalty?

ROYALTY, as we know it, was the outgrowth of feudalism and until the signing of the Magna Charta at Runneymede in 1215, usually implied despotism. It carried with it the assumption that the right to entailed wealth, to titles, and to rule were God-given. Royalists believed that they had the right to maintain many of their positions by levying a toll on the efforts of people not divinely favored. Originally the word "royalty" applied only to the rents the common people were forced to pay for the privilege of living on the land of the feudal chiefs. In time, the ruling classes assumed that they themselves were the royalty and the rentals were not payments for the use of the land, but contributions from commoners to those especially set apart by the Creator as the elect.

Almost before the ink was dry on

¶ "AFTER *the Magna Charta, the signing of the Declaration of American Independence came as another great blow to the theory of divine rights—this time in the new world of America. With the establishment of a government without a vested ruling class firmly established in the United States, other people began to throw off the royal yoke and a large part of the world accepted the theory that 'all men are created free and equal.'* "

the Magna Charta, English royalists began to try to devise some way whereby they could retain their favored positions. From time to time, there appeared strong men who were able to regain temporarily many of the special privileges which formerly were conceded as the rights of the rulers, but the end of each century saw a more restricted royalty than that which had existed at its beginning. Conversely, the lot of common people became more secure.

After the Magna Charta, the signing of the Declaration of American Independence came as another great blow to the theory of divine rights—this time in the new world of America. With the establishing of a government without a vested ruling class firmly established in the United States, other people began to throw off the royal yoke and a large part of the world accepted the theory that "all men are created free and equal."

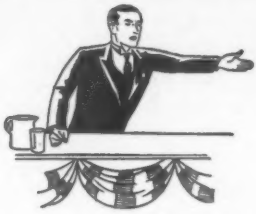
But the old order did not die so easily. With the end of the World War, there came a new conception of "royalty." The theory of the equality and brotherhood of man, incorporated into the theory of government, did not, nor does it now, in any way dampen the ardor of strong and capable men for exalted positions of political and economic power.

The foundation of European royalty was hereditary titles supported by land holdings. For about three centuries land was the unit by which wealth was measured in both Americas, but, without the legal rights to entail large land holdings, large estates eventually fell apart. For nearly a century an effort was made to create estates built around some form of industry. As a class, American men of wealth are still thinking in terms of industrially created estates. There is now an ever-increasing number of individuals who realize that ability cannot be bequeathed to an heir.

For nearly a century after American Independence, the great quest of royalists was for a new scheme whereby men could amass fortunes and pass the benefits of their wealth to their heirs. During that developing period of our Mechanical Age, which greatly increased our ability to create wealth, vast fortunes became comparatively numerous and relatively easy to acquire. Most of the middle class and many of the laboring classes are now enjoying luxuries which surpassed those enjoyed by royalty two centuries ago.

It was not until about 1870, nearly 100 years after the Declaration of Independence was signed, before anyone devised a way whereby benefits of these fortunes could be passed onto heirs in such a way that they could be enjoyed without responsibilities to society or risk to the owner. Now after sixty-five years, the people are beginning to learn that an ever-increasing debt has been saddled on us and our descendents for generations to come, and that many of these debts are basically in the interest of a royalty in the making.

When the Iron Chancellor Bismarck was trying to devise ways and means whereby he could finance the German Empire, he went to the House of Rothschild for counsel. Out of these negotiations came a plan which eventually placed all of the full wealth of the German people at the disposal of the



Government Attack Is Government Aid

"MANY government bonds are being issued to provide the funds with which to subsidize local government-in-business enterprises, while others are for the purpose of direct subsidy to preferred industries and voting groups. . . . After studying the effect of several decades of government attack on the electric industry and comparing it with those industries which are selling their birthright for government aid, I am quite convinced that government attack is preferable to government aid and all that goes with it. The politician in attack is less to be feared than the politician in the roll of savior."

State, and at the same time, gave to the investors a security which was tax free, with interest and principal collected at public expense. In reality, the security was a first mortgage on all of the then existing and future resources and wealth of the German people. Neither Bismarck nor Rothschild created anything new; they simply made a new use for a type of security which had existed for many decades. The new thing which they did was to give to the people a security which carried the pledge of the nation, whereas, up to that time monarchs borrowed money more or less on their own personal account, and municipalities pledged only that portion of the property which was benefited, when they mortgaged the future.

AT first these preferred securities were issued only to the petty princes, thus making it possible for them to live at public expense; as the wealth of the merchant and industrial class increased, they were made available to all. In fact, much of the development of the German Empire was forced onto the nation by people who desired these securities. Many times the common people and labor demanded that the future be mortgaged, in order that temporary benefits might be enjoyed.

This type of financing[8] did not appear in America until about 1880, but when it did come, the use to which it was applied bore little relation to the use Bismarck made of it. In Germany the security in addition to making the financing of the Empire easy was used to make the resources and incomes of

[8] The United States took similar action when it created the national banks and permitted them to issue money, the value of which was secured by national bonds.

the petty royalty safe without giving them a voice in the government. In America the investment banker got behind the securities and in time built up a clientelé which was able to absorb these securities in quantities. And now they are forcing the various divisions of government into issuing these bonds in order that men with more wealth than they can handle in business or look after if invested in property will have a safe place to invest their surplus funds. Broadly speaking, the holders of these securities constitute a modern royalty.

IN the more advanced countries, particularly the United States, there is growing up a new class, which, by the ownership of government securities, has more privileges and less responsibility than any royalty the world has ever known. They live on the taxes of the people, while they themselves enjoy many tax exemptions.

What is the nature of these bonds and how are they created?

1. The bonds must be secured by a pledging of a tax levy covering all of the property in the whole taxing districts.
2. The interest and principal must be collected at public expense and delivered to the bondholder without cost.
3. They must be to all intents and purposes tax[8] free.

There are three major ways whereby these securities are created. In the order of their desirability, they are created:

1. By anticipating revenue for the creation of public works.
2. By the creation of governmental deficits.
3. By putting the government into business.

Public and alleged public improvements vary all the way from public buildings clear down to the more defenseless type of boondoggling. But, by and large, the money expended in this way is authorized by the voters, who get something for their money. The fact that many times these alleged improvements are a liability seems to be of little consequence. Deficits are sometimes justifiable but, as a rule, they are unpopular and sooner or later are a source of political trouble. Deficits have been responsible for a large volume of tax-free securities.

FOR many years anticipating the future for the creation of public improvements was the major cause for mortgaging the future. From time to time, deficits have been a factor. At the present time, both mortgaging the future in the name of public improvements and deficits are increasing at an unprecedented rate, yet the new borrowing to finance the various invasions of government in business is outstripping both of them in the production of new bonds.

Note that I have used the terms "public improvements" rather than "public works." Many of our alleged public works projects are public liabilities, while others are in the nature of endowed economic tombstones. They offer no hope for success as business enterprises and at the same time work irreparable hardships on long established, legitimate, honestly operated businesses and industries.

[8] Many investors, knowing that few government-business enterprises can hope to stand on their own feet, are centering public attention on the tax-free feature of government bonds to detract public attention from the fact that the bonds are a first lien on all of the property and income in the taxing districts and that principal and interest are collected and paid at public expense.

So well known are some of the larger of these government-in-business projects that few people realize that their very prominence is the result of high powered propaganda, which is serving a dual purpose. First, it leads the public to believe these major projects are being installed to bridge a gap which business and industry have been unable or unwilling to bridge. Second, it creates a smoke screen behind which is hidden the fact that more than 200 legitimate businesses are being forced in varying degree to meet either subsidized competition or political dictatorship.[4]

[4] The fact that political promoters for government enterprises in business operations realize that they must cover up costs to recover practical benefits may explain, in part, the reason why utilities are a favorite target for their attacks as distinguished from other types of commerce. By their nature, utility operations invite bookkeeping "experiments." In the utility field, for example, interest on money invested, obsolescence of property, and taxes usually amount to approximately 50 per cent of gross income. These costs run higher on small steam and oil engine plants and may even run as high as 80 per cent on hydro plants. By charging all or portions of these costs against the taxpayers and failing to provide for them out of operating revenues, political management can make a good showing. In utilities, the business cycle is very long and comprehensive accounting of results is less frequent than in the merchandising business, for instance, where capital is turned over very often and where interest on money and taxes are relatively small items of total cost. Thus, in certain mercantile lines, more than 50 per cent of operating expenses is represented by the cost of the commodity dealt in, which must be either sold or written off the books within a relatively short period.

MANY government bonds are being issued to provide the funds with which to subsidize local government-in-business enterprises, while others are for the purpose of direct subsidy to preferred industries and voting groups.

Not all of the sin of mortgaging the future can be laid at the door of the politician or certain types of investment bankers and their clientelés. There are few pages in the history of government in business that give more food for thought than those which record the history of the unloading of waterworks onto the cities and towns of America. But some of the new pages being written show promise of becoming even more interesting, if disturbing, reading.

After studying the effect of several decades of government attack on the electric industry and comparing it with those industries which are selling their birthright for government aid, I am quite convinced that government attack is preferable to government aid and all that goes with it. The politician in attack is less to be feared than the politician in the roll of savior.

The most disturbing trend of the modern government ownership movement from the viewpoint of sound economy and equitable government is the character of securities sought to support the various public ownership

¶ "IN *the more advanced countries, particularly the United States, there is growing up a new class, which, by the ownership of government securities, has more privileges and less responsibility than any royalty the world has ever known. They live on the taxes of the people, while they themselves enjoy many tax exemptions.*"

ventures. First of all, they must be tax exempt. Next, the promoters are generally keen to see that these bonds become a direct obligation, chargeable against all taxable property. They may give lip service to the "revenue bond" idea and talk loudly of their proposed projects "standing on their own feet" or "paying for themselves." But sooner or later, if not in the beginning, steps will be taken to see that these tax-exempt securities will be guaranteed by the credit of the governmental body issuing them. Already, to give a specific example, there is talk about amending the New York State Power Authority law so as to provide for tax-supported securities in the event the proposed St. Lawrence hydro power project ever gets under way.

FOR many years there have been statutory limits of indebtedness to protect the taxpayers from those who hold that if a business with an indebtedness of less than half its assets is solvent, a government should be permitted to pledge upwards of 50 per cent of its wealth without danger. More than a decade ago, there were men who were openly advocating that America could support upwards of 50 billion dollars worth of Federal indebtedness. President Roosevelt has stated that certain unnamed "bankers" had suggested a Federal indebtedness of 70 billion as not necessarily dangerous.

Speaking of the President reminds me that he has made some disparaging remarks regarding "economic royalists." A few years ago when the United States Senate was America's most exclusive rich man's club, the term "economic royalty" seemed possible. Time has proven the falseness of this assumption. The richest man ever to sit in the Senate (who died recently) transferred the major part of his industrial holdings into tax-free bonds. Students of economics now know that men of wealth, who create economic empires, cannot pass the ability to operate them on to their heirs. If you doubt it, look over the directorate of some of the vast estates or business enterprises of a relatively few years ago. The readjustment after the World War and our income tax laws have made America cease to think of industrial royalists and center her attention on an American royalty built around the owning of tax-exempt securities, not only a possibility, but an imminent hazard.

WITH deflation and business stagnation, America as a nation became conscious of the card house structures of some of her business fortunes and the poverty which goes with the ownership of property which produces a deficit. Men of wealth are beginning to think in terms of an estate, which has a guaranteed fixed value and income; one which can with confidence be passed on to their heirs. No royalty of the past has ever had the opportunity of enjoying such privileges with the taxpayers' money; no royalty has ever had so few obligations to society as is now being given to American men of wealth. The holders of these securities need not even go to the public trough; the "trough" is brought to them at public expense. By the way, the holders of these securities are free to enter public life, knowing that their possible government and economic mistakes will in no way hazard either their basic wealth or their income.

Social Security Fund Growth

"IN a few years Social Security funds will have reached such a sizable volume of money that all outstanding Federal securities plus several billion yet unissued will have been purchased by the United States Treasury Department with deductions from the pay checks of the industrial workers. Carried to its logical conclusion, the workers may some day find themselves paying the interest on the bonds which guarantee their security 'in the sweat of every man who labors.'"

So we see that the security of America's budding royalty rests on the ownership of public debts, which are guaranteed by the American producers. Perhaps this condition explains why:

1. The former Secretary of the Treasury, Andrew Mellon, was denounced for retiring government obligations at the rate of upwards of a billion dollars a year. Yes, "Andy" destroyed several billion dollars worth of the world's most desirable wealth when he reduced the Federal government debt.

2. Government credit has to be used to protect each business that is shaky, and why credit has been forced into industry wherever the politician and the investment bankers' clientelé saw the need. It also explains why some industries must be subsidized and why large flocks of American citizens have to be pauperized.

3. Government resources must be used to put men to work, even at boondoggling.

4. Government in everybody's business except your own has become accepted as economically sound. Thus, some of our wealthiest citizens have become "social minded" on the subject of public ownership and operation of public utilities.

5. Even deficits, which eventually must be met with bonds, have assumed a halo.

EACH of these activities is of vital importance to those investors who would rather have a tax-free first mortgage on all of the resources of the American people than to take the hazards of business or assume the responsibilities of owning property.

Note that I have said little about this administration or the last one, neither have I mentioned Republicans or Democrats or New Dealers, nor have I said much about government spending. Administrations will come and go and the voters will rise up from time to time and smite the politician in power and replace him with a man fully

as incompetent. Aside from an occasional effort of some politician to build a family dynasty or to will his office to some member of his family, there is little in politics which savors of the creation of a hereditary office-holding class.

But how shall we check our trend towards a bond-holding royalty? The road will be long and hard, but the problem must be met. The machinery is already starting to move. A Treasury analysis would surely show that if those people who pay an income tax should be required to include the income from their government bonds in their income statement and that only the surtax be collected, the added revenue to the government will be many millions per year. Many of these securities are owned by people who come in the highest income tax brackets. A large part of the remainder is held by men who pay a surtax. The politician will soon find a way to tax these millions, but the pledging of all of the resources of the taxing district to guarantee principal and interest and inadequate bookkeeping will continue as long as the voters will permit them to exist.

CONGRESSMAN Shannon of Missouri had a bill before the last Congress which provides that all government-in-business activities should keep their books so that they will include all of the costs which competing private business must consider. There is also a movement afoot to require that when government money is put into business the holder of the bonds cannot go beyond the property and profit of that particular business for their interest and the repayment of the principal. When that day comes, there will be little government in business.

Do I hear you say that there are natural monopolies and services which the State can render cheaper and better than they can be furnished by private business? If there are such businesses and they can be made to stand on their own feet with all accounts properly handled, I don't believe that there are many who would object.

Governmental deficits must be held to a minimum. Already our legislatures are passing laws which prevent the transfer of funds and the exceeding of budget appropriations. America's danger is not in honest deficits or government in business which is made to stand on its own feet; America's danger lies in our pledging all of the resources of the nation to guarantee the debts which are incurred for the benefits of a favored few, and then permitting these pledges to be used for the benefit of a favored class, who desire to avoid the responsibilities which go with citizenship. Her greatest danger right now is subsidized government in business.

AMERICA must correct this evil or accept a royalty. Of course, there is always a chance that something may happen to prevent a royalty developing in this country. The fathers in America made our government one of checks and balances. Perhaps our Social Security Act is a check on this new royalty. This act provides that the money collected from the industrial payrolls shall be invested in government bonds.

In a few years Social Security funds will have reached such a sizable volume of money that all outstanding Federal

securities plus several billion yet unissued will have been purchased by the United States Treasury Department with deductions from the pay checks of the industrial workers.

Carried to its logical conclusion, the workers may some day find themselves paying the interest on the bonds which guarantee their security "in the sweat of every man who labors." But why talk about Social Security? That is something else; even those who gave birth to the plan seem to be a little hazy about it.

On Wisconsin!

The number of Senators and Representatives in Congress (and state governors as well) who obtained their start with their state regulatory agency gives evidence of the fact that the state public service commission is an excellent stepping-stone to success in public life, if one otherwise has the ability. In the 74th session of Congress, the late Huey Long, one-time chairman of the Louisiana Public Service Commission, was perhaps the outstanding commission "alumnus." In the Senate of the 75th Congress we find the state of New Hampshire represented exclusively by former members of the state's public service commission. Both the senior Senator Fred H. Brown and the junior Senator H. Styles Bridges served in that capacity. Senator Bridges was more recently the governor of New Hampshire as well.

It is in Wisconsin, however, that the usefulness of public service commission employment in training men for successful public life seems to have reached its fullest flower. A recent study shows that of thirty men in more important Wisconsin staff positions who left commission service voluntarily since 1931, all but three went to Federal or other state commissions, or into other public employment. Five men have had leaves of absence from the Wisconsin commission, while working for Federal commissions.

Former Wisconsin Commissioner David E. Lilienthal, now power director of the Tennessee Valley Authority, is perhaps the most outstanding Wisconsin commission "alumnus." A good number of the Wisconsin men, however, went into the service of the Federal Communications Commission. They include John H. Bickley, chief accountant of the telephone investigation, Accountants Samuel Meisels, Magnus Andersen, and Keith McKy, Engineers C. G. Hill, L. T. Hayner, Kosmo J. Affanasiev, Allan K. Hamilton, A. E. Girard, and until recently Rate Analyst Julius A. Krug, who is now doing special duty with the Kentucky Public Service Commission.

The Federal Securities and Exchange Commission went to the Wisconsin commission for one of its associate members, George C. Matthews, former chief examiner of the Wisconsin board. Other Wisconsin "alumni" with the SEC are A. C. Johnson, counsel, Richard C. Wenzel, rate analyst, and J. C. Damon, engineer.

Accountants H. B. Bearden and Ralph F. Gates went from Wisconsin to the Federal Power Commission, while rate clerk Vern C. Adams went to the Interstate Commerce Commission and securities examiner, Matthew Brossard went to the Federal Housing Administration. Rate Analyst Hanina Zinder went to the Rural Electrification Administration, and publicity editor, Bryn Griffiths is doing publicity work for various Federal agencies.

The Wisconsin commission has also sent some of its staff men to other commissions and to other state positions. Accountant John C. Masson went to the Maryland commission, engineer Edward Collins went to the New York commission, engineer J. H. Mitchell went to the West Virginia commission, engineer O. W. Barenscher went to the Virginia commission, and engineer J. J. McDonnell went to the Alabama commission.

Engineer A. V. Guillou went to Los Angeles to become special engineer for the municipal plant of that city. Former chief counsel Alvin C. Reis became judge of the Dane County Circuit Court, while engineers Edmund D. Ayres and G. A. Chutter have taken posts as teachers at the University of Wisconsin and Boston Technological institution, respectively. Rate Analyst Walter E. Caine is back with the commission after a stay with REA.

FALLACY OF COMPETITIVE BIDDING FOR

Public Utility Securities

PART I

In this article and another which will follow the author opens up a comparatively new subject in the regulatory field and pioneers in the discussion of a group of questions arising out of competitive bidding, a matter of great concern to public utilities, to their customers, to investors in their securities, to regulatory commissions, and to bankers. These articles are of timely interest owing to the growing tendency of commissions to require the disposal of securities by the competitive method.

BY ERNEST R. ABRAMS

ONE of the unusual developments of the greedy demand for prime public utility bonds that has existed during 1935 and 1936 has been the growing tendency of state regulatory bodies to require the sale of capital issues of the utilities under their jurisdiction at competitive bidding. Mandatory by statute for many years in Massachusetts, New Hampshire became the first state to adopt this policy at commission direction when its public service commission in July of 1935, acting within the discretionary powers granted it by statute, first required the engagement of capital by Public Service Company of New Hampshire under this arrangement. The satisfactory prices obtained under this system of capital engagement led the public utilities commission of the District of Columbia to institute a similar policy in December of the same year, while a partial institution of this system during 1936 resulted in Maine and Vermont.

At first glance, the results obtained under this arrangement would appear to have worked to the benefit of the utilities, the investors in their securities, and the consumers of their services alike, since the "spreads" between the prices which the utilities received for their security issues and the prices at which these issues were distributed to the investors were uniformly smaller than where issues were underwritten in the more orthodox manner of coöperative negotiation between the utilities and their bankers.

The competitive bidding system has long been in effect in the field of municipal financing and, since 1926, in the underwriting of equipment trust obligations where, due to the comparative simplicity of their credits, the

system has apparently been productive of satisfactory results. Owing somewhat to the record established in those fields, but largely to the measure of success obtained during its brief trial in the field of public utility financing, the competitive system of arranging capital engagement by utilities has been widely acclaimed by regulatory bodies and public spokesmen, many with little experience in or understanding of the fundamentals of investment banking, as the cheapest and most satisfactory method of engaging bond distribution, and the extension of this system to other states now appears to be a near-term possibility.

From the long-term point of view, however, the apparent bargains in the cost of security distribution which have so far been obtained may eventually prove rather costly to the financing utilities. Although they have received a greater proportion of the sum total of investment made by the individual security purchasers than has apparently resulted from the more general method of coöperative engagement, with a corresponding decline in the gross underwriting margins accruing to the security distributing organizations, the subsequent market actions of those issues, sold at the highest levels at which the market would absorb them, has largely resulted in either a subsequent decline or little or no appreciation from their original offering prices. Furthermore, when matched with comparable issues arranged in the more orthodox manner which were distributed at about the same time and under the same market conditions, the benefits to the investors are found largely in the latter issues.

So far, the competitively engaged issues have been mostly of the highest quality and the financing of the issuing utilities has presented no real problems in corporate finance where expert opinion was required in the determination of the terms and conditions of the issues for which bids were to be invited. Nothing so far in the brief experience with competitive bidding for utility security issues has indicated the degree of success to be obtained when the system is extended to the engagement of second grade issues or to utilities whose financing demands competent and experienced judgement.

It is believed, therefore, that considerable benefit to all interested parties—the utilities, their consumers, the investors in their securities, the regulatory commissions, and the bankers—will result from a full discussion of the factors pertinent to the engagement of investment funds and the probable effects thereon of an extension of the competitive bidding system, both geographically and throughout the entire range of utility securities and credits.

The state of Massachusetts requires by statute that certain classes of utilities must invite sealed bids under the direction of the state department of utilities for any long-term bond issues which they desire to distribute. Section 15, Chap. 164, Massachusetts General Laws, provides as follows:

> A gas or electric company, under the supervision of the department, issuing bonds . . . shall invite proposals for the purchase thereof by advertisement in two or more newspapers published in the city or town where it is situated, if there be such, and in two or more newspapers published in Boston. It may, however, reserve the right to reject any or all bids. If no such proposal is accepted, it may sell the whole or any part of

the bonds to any persons or corporations in such manner, at such times, and upon such terms, but in no case at less than the par value thereof to be actually paid in cash, as its directors shall determine.

The practical result of this statute has been an abnormal paucity of long-term financing by Massachusetts utilities in the past five years. With the exception of $950,000 Lowell Gas Light 5½s which were purchased by the parental holding company in 1933, no financing of this character has been recorded for any of the utilities of the state of the designated classifications in 1932, 1933, or 1934. In the one instance cited, these bonds were later distributed by an underwriter at 99½, indicating that this issue had failed to meet the statutory requirement of sale at par or better and that the parental holding company had been forced to absorb the difference between the face value of the bonds and the net price received from the underwriter.

EDISON Electric Illuminating Company of Boston, perhaps the highest rated utility in the state from the standpoint of credit, pursued the policy, following the adoption of this statute, of periodic sale and refunding of short-term (three years or less) notes which were exempted from the legal competitive requirement and it was not until July of 1935 when $53,000,000 3½s of 1965 were sold that it engaged in any long-term bond financing.

Between the date of this financing and the end of 1936, only four instances of long-term bond financing are reported in Massachusetts, two being issues of a principal amount of under one million dollars each, one being an issue of three million dollars which was reportedly purchased by the agent of an institutional investor and from which no public offering resulted, and one large issue which was offered in the late fall of 1936. (See Table I below.)

New Hampshire has no statute requiring competitive bidding for utility issues but, acting under the discretionary powers conveyed by statutory provision that all utility security issues must meet with the approval of the public service commission, that body by order instituted a policy of competitive bidding in July of 1935. Furthermore, in the instance of one utility whose service area included portions of both New Hampshire and Vermont, the public service commission of the latter state joined with the New Hampshire commission in requiring the sale of an issue under the competitive system.

Table I

COMPETITIVE OFFERINGS OF MASSACHUSETTS UTILITIES—1935 and 1936

Offering Date	*Amount of Issue*	*Issue*	*Price to Public*	*Yield*	*Bankers' Spread*
7–19–1935	$53,000,000	Edison Electric Illuminating 3½s of 1965	103.79	3.30%	1.877
1–18–1936	750,000	Cape & Vineyard Electric 4s of 1965	103.25	3.81	1.981
2–18–1936	950,000	Lowell Gas Light 4½s of 1966	107.00	4.09	1.000
11–12–1936	10,067,500	New England Power 3½s of 1961	103.50	3.12	0.9991
11–16–1936	3,000,000	Turner Falls Power & Electric 3½s of 1966	Bought by institutional investor — No Public offering		

THE Honorable Nelson Lee Smith, chairman of the New Hampshire commission, under date of November 12, 1935, on the occasion of the sale of the second Public Service Company of New Hampshire issue under this arrangement, said in part:

"From the point of view of the public—both as customer and investor—it is imperative that the securities of its utilities be sold upon terms and conditions and at prices, which, all things considered, are the best obtainable. In recognition of this fact, the statute empowers this commission to authorize the issuance of securities only 'if in its judgment the issue of such securities upon the terms proposed is consistent with the public good' and 'upon consideration of any such application (to) take into account all the facts and circumstances which may be relevant to the question whether the proposed issue of securities may be made consistently with the public good.' From this it follows that we may withhold permission to issue securities because of objections relating to the proposed amount, type, maturity, interest rate, or price, and that we may call for such affirmative showing as to the reasonableness thereof as, in our opinion, is requisite to a proper determination of these questions.

"Acting under this grant of authority, and because of our view that, under present conditions, competitive bidding constitutes the best method of disclosing the most favorable terms upon which bonds may be issued and sold by a public utility, our authorization of a recent refunding operation by the petitioner herein required 'comparable competitive bids secured in compliance with procedures acceptable to this commission' as the basis for our supplemental order relating to the terms and price of the proposed issue.

"The results in that instance appear to justify our insistence upon the use of like procedures in similar cases. Therefore, our authorization herein will be subject to the condition that the exact terms and price of the proposed issue be determined after competitive bids have been secured in compliance with the following requirements:

1. A specimen of the specifications or invitation to bid for the issue shall be filed in advance with this commission. Since the company wishes to secure offers for bonds of a variety of terms, maturities, and interest rates, such specifications or invitation shall be so phrased as to insure the submission of truly comparable bids. Bidders shall be directed to name all parties associated in a joint bid or tender entered on behalf of a syndicate.

2. A list of those invited to bid shall be filed in advance with this commission.

3. A statement showing in detail all bids, together with the net proceeds and cost of money to maturity under each, shall be filed promptly with this commission, such statement to serve as a basis of our supplemental order fixing the terms and price of the issue.

"The above condition and requirements are intended to protect the public interest by insuring the issuance and sale of the proposed securities upon the best terms currently obtainable."

SINCE the institution of this policy by the New Hampshire commission in July of 1935, two utilities lying wholly within their jurisdiction and one utility operating in both New

Table II

COMPETITIVE OFFERINGS[1] OF NEW HAMPSHIRE UTILITIES—1935 and 1936

Offering Date	*Amount of Issue*	*Issue*	*Price to Public*	*Yield*	*Bankers' Spread*
8–26–1935	$5,400,000	Public Service of New Hampshire "C" 3¾s of 1960	102.04	3.62%	1.280
11–20–1935	10,379,000	Public Service of New Hampshire "D" 3¾s of 1960	101.75	3.64	1.103
2–18–1936	20,300,000	Connecticut River Power 3¾s of 1961	104.50	3.47	1.221
8–12–1936	1,000,000	Public Service of New Hampshire "E" 3¾s of 1961	104.125	3.26	0.753
8–25–1936	7,000,000	[2]Central Vermont Public Service 3¼s of 1966	101.875	3.40	1.283
12–23–1936	1,400,000	Public Service of New Hampshire "F" 3¼s of 1966	101.50	3.15	0.735

[1] In addition to the above bond issues, 4,868 shares of Public Service of New Hampshire $5 preferred stock was offered as an underwriting on August 12, 1936, at 97.25 to yield 5.14% on which the bankers' spread was 2.19 points, and 11,500 shares of the same stock was so offered on December 23, 1936, at par on which the bankers' spread was 2.345 points.

[2] Sold under the joint authorization of the public service commissions of New Hampshire and Vermont.

Hampshire and Vermont have sold issues of long-term bonds under the competitive arrangement. (See Table II above.)

Competitive bidding in the District of Columbia was instituted by commission order under date of December 30, 1935 (12 P.U.R.(N.S.) 9), from which order the following is quoted:

> Paragraph 73 of the Public Utilities Act provides that no public utility shall issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than one year from date of issuance, until it shall have first obtained certificate showing authority for such issue from the public utilities commission.
>
> Paragraph 77 of the act provides that no public utility shall issue such stocks, bonds, or other evidences of indebtedness on any less favorable terms than specified in the certificate issued by the commission.
>
> To enable the commission to carry out the intent of the act with respect to the matter of approval of issuance of securities and to be informed adequately as to the propriety of any authorization or certification, evidence must be before it on which to base its action; and it is the opinion of the commission that the interests of the public and utilities under its jurisdiction require that any utility proposing to issue and sell stocks, stock certificates, bonds, or other evidences of indebtedness payable in more than one year from date of issuance solicit bids therefor from a reasonable number (not less than three) of reputable and responsible unaffiliated brokers, bankers, or other financial institutions, at least two of whom shall not be affiliated with or financially interested in the utility. Applications should state that bids will be solicited as outlined and that all bids will be submitted to the commission.
>
> The commission will grant certificates authorizing the sale of stocks, bonds, etc., by a utility through its own organization to its employees and the public, upon terms and conditions satisfactory to the commission.

THE only reported sale of a long-term utility issue at competitive

bidding under the provisions of this order was the $15,000,000 Potomac Electric Power 3½s of 1966, publicly offered on June 25, 1936, at 104 to yield 3.12 per cent and on which the bankers' spread was 0.973 points.

The only instance in which the public service commission of Vermont is reported to have required competitive bidding was in coöperation with the New Hampshire commission in connection with the Central Vermont Public Service financing, previously discussed. The public utilities commission of Maine has issued no orders as yet in connection with competitive bidding for utility issues although they state that they have had occasion to authorize refunding on a competitive basis in a number of instances. No record thereof was available.

In none of the states where competitive bidding has been adopted, either by statutory requirement or through commission direction, must the utility accept the highest bid received, although in every instance but one, the highest bid has been accepted by both the utility and the commission. In the one instance where the second ranking bid was accepted, the highest bid was tendered for an issue bearing lower interest coupons than that eventually sold, with a consequential smaller premium over and above the face amount of the issue. Since the utility was primarily interested in obtaining the largest consistent dollar volume and as the cost of money to maturity under the second ranking bid was but infinitesimally greater than in the top ranking bid, the utility recommended the acceptance of the second highest bid and the commission so ordered. However, except in unusual cases, the effect of competitive bidding is largely to compel the acceptance of the highest bid, particularly when bids are invited for a definite issue of established terms and conditions.

THE most striking result obtained in the instances of competitive bidding previously listed is the relatively narrow bankers' spreads, representing the gross margins for underwriters' services. These sales of eleven long-term issues, totaling $128,246,500 face value, show an average spread of 1.200 points per issue, with the largest spread of 1.981 points reported for the small Cape & Vineyard Electric issue and the smallest spread of 0.735 points for the fourth Public Service of New Hampshire ("F" 3½s of 1966) issue. For the purpose of providing a basis of comparison of this low-cost method of bond distribution with the more orthodox arrangement of private negotiation, the pertinent data concerning nineteen comparable issues which were privately engaged and distributed during the same periods are presented in Table III, page 420.

These nineteen issues, totaling $539,288,500 face value, which were underwritten on a noncompetitive basis, show an average bankers' spread of 2.10 points per issue, with the largest spread of 2.50 points in both the Southwestern Gas & Electric and the Oklahoma Gas & Electric issues and the smallest spread of 1.75 points in the Central Maine Power issue.

The obvious inference to be drawn from this limited comparison between competitively and noncompetitively engaged underwritings is seemingly that the former arrangement has definitely demonstrated its ability in a hungry

market to produce higher prices for prime issues, or a greater proportion of the gross proceeds invested by individual purchasers, to the issuing utilities. Whether comparable results can be obtained from an extension of this method of capital engagement to second grade issues, or in cases where corporate structures are distorted, or in a "buyer's" market, or, even more important, in the event that competitive bidding is extended to all utility issues of every investment ranking, must yet be determined from actual experience.

SUCH, briefly, are the results that have been so far obtained under the system of competitive bidding for utility bond issues in the states of Massachusetts, New Hampshire, and Vermont and in the District of Columbia. It might be pertinent to inquire into the objectives to be obtained that have prompted this limited number of states to institute this policy.

The primary objective has obviously been the procurement of better prices for public utility security issues, with the secondary objectives of reducing the profits of their underwriters and the positive establishment of arm's length bargaining. With respect to the first of these objectives, the philosophy of the regulatory commissions which have adopted this method of capital engagement runs along this channel: Being charged with the duty of approving the prices of prospective security issues on the one hand, and not having appropriations sufficiently large to permit of the employment of the necessary experts for determining the appropriate prices at which such securities should be sold on the other, the best policy to pursue seemingly was to have those who are expert in such matters indicate, by their willingness to sell the securities, the prices at which they thought the sales

Table III

REPRESENTATIVE NONCOMPETITIVE UTILITY OFFERINGS—1935 and 1936

Offering Date	*Amount of Issue*	*Issue*	*Price to Public*	*Yield*	*Bankers' Spread*
9–23–1935	$19,172,000	Consumers Power 3¼s of 1965	99.00	3.67%	2.00
9–23–1935	20,000,000	Pacific Gas & Electric 4s of 1964	102.00	3.89	2.00
9–26–1935	49,000,000	Detroit Edison 4s of 1965	103.50	3.91	2.00
10–14–1935	20,000,000	Dayton Power & Light 3¼s of 1960	99.50	3.67	2.25
11–25–1935	25,000,000	New York & Queens Electric Light & Power 3¼s of 1960	102.00	3.39	2.00
12–20–1935	16,000,000	Southwestern Gas & Electric 4s of 1960	99.50	4.05	2.50
1–15–1936	27,000,000	West Penn Power 3¼s of 1966	103.00	3.35	2.00
2–16–1936	7,178,500	Central Illinois Light 3¼s of 1966	104.00	3.28	2.25
2–27–1936	55,000,000	New York Edison 3¼s of 1965	100.00	3.25	2.00
3–19–1936	55,830,000	Consumers Power 3¼s of 1970	103.50	3.32	2.00
3–23–1936	90,000,000	Pacific Gas & Electric 3¼s of 1961	102.50	3.57	2.00
7–17–1936	7,108,000	Bangor Hydro-Electric 3¼s of 1966	104.625	3.48	2.25
9– 2–1936	28,000,000	Louisville Gas & Electric 3¼s of 1966	102.75	3.35	2.25
9–21–1936	20,000,000	Detroit Edison 3¼s of 1966	105.00	3.24	2.00
10–26–1936	14,000,000	Central Maine Power 3¼s of 1966	101.75	3.40	1.75
12– 3–1936	12,000,000	Consumers Power 3¼s of 1966	102.50	3.20	2.00
12– 3–1936	35,000,000	Oklahoma Gas & Electric 3¼s of 1966	102.50	3.60	2.50
12– 8–1936	23,000,000	Consolidated Gas Electric Light & Power of Baltimore 3¼s of 1971	104.00	3.16	2.00
12–15–1936	16,000,000	Connecticut Light & Power 3¼s of 1966	104.00	3.12	2.00

could be made with profit to themselves.

With respect to the second objective, their reasoning has run along this line: Financial institutions, at least in appearance, have divided the needs of the various utilities or groups of utilities among themselves by some method of agreement and the financial community has recognized that the financing of any such utility or group was the "business" of a certain banker while the balance of the fraternity has "laid off." In such cases, with but one bid submitted for security issues, there appeared to be no way, short of the employment of experts, by which a regulatory body could determine the fairness of the proposals made by the banking houses through which the financial operations were conducted.

WITH respect to the third objective, the thoughts of the commissions proceeded along this vein: In innumerable instances, the financial operations of utilities have been conducted, through the underwriting and distribution of an unbroken series of security issues, by banking houses or groups of houses having one or more representatives on the boards of directors of the financed utilities; in many instances, bankers or groups of bankers have openly acquired substantial interests in utility corporations for the evident purpose of controlling their financing; in other instances, where no representatives of the banking group acted in any official capacity for the financed utility or where no obvious interest in its voting securities existed, banking groups through personal contacts or "gentlemen's agreements" continued to control the financing of numerous utilities. The obvious inference, drawn by the regulatory bodies, was that a total or partial absence of arm's length bargaining existed in these situations to the disadvantage of the utilities, their investors, and their consumers, and that they would be derelict in the discharge of their duties under the law if some policy was not brought forth which would insure a definite establishment of true arm's length bargaining between the utilities under their jurisdiction and the bankers who underwrote their securities.

(To be concluded in the next issue.)

At Last—A Way to Make a Canary Bird Sing Bass

THE *Bell Telephone Laboratories are laboring on a device that will enable a man to sing a duet with himself even while he is perfectly sober. The new machine is a kind of telephone which mimics the human voice in such a way that it can change a female soprano voice so as to make it sound like a heavy baritone, or vice versa. Furthermore, the two different tones can be reproduced simultaneously so as to sound like two different persons. It was demonstrated at the recent Harvard Tercentenary by Dr. Frank B. Jewett, head of the Bell laboratories.*

How Can Rates Be Varied with Changing Conditions?

What is the answer to the complaint that rates do not fall when prices are depressed? The author discusses attempts which have been made to find a solution without violating property rights.

By ELLSWORTH NICHOLS

RATE regulation proceeds on the theory that charges for public utility service shall always be fair and reasonable. Rates when once properly established would meet this requirement if conditions were unchanging. Unfortunately for the effective operation of the theory, rates which are reasonable today may be unreasonable tomorrow—either too high or too low.

Criticism of public utility regulation has arisen from the delay in changing rates to meet economic demands. Anyone familiar with the quantity of evidence which must necessarily be presented to the commissions and digested by them has to admit that rate decisions cannot be hastily made. Snap judgments would not be tolerated by either the ratepayers or the public utilities. The interests involved are too important. Rate making without due deliberation can only result in subsequent litigation in court. But delay in the rate process is a fact that cannot be dodged.

Recognition of the fact that changes in rates cannot always keep abreast of changing conditions therefore impels us to look for a way to remedy any injustice which results from the continuance of rates for a longer time than they may continue to be fair, or to discover a method for effecting an immediate rate change with safeguards that will assure a fair adjustment if the new rates are ultimately found to be too high or too low.

THERE seem to be only two possible plans for achieving our end: first, to continue existing rates during a rate investigation and then require a refund of overcharges to ratepayers or allow recoupment of loss by the utility; or, second, to establish temporary rates for the duration of the rate war and then provide for such refund or recoupment.

HOW CAN RATES BE VARIED WITH CHANGING CONDITIONS?

Inability to remedy completely by retroactive action the injury caused by incorrect rates has been the reason for proposals to put into effect temporary rates whenever facts are presented which on their face make it appear that existing rates should be raised or lowered. A review of the principles governing refunds to customers and recoupment of losses by utilities furnishes a background for an examination of these proposals.

ORDINARILY good fortune or misfortune in the past has no bearing on the reasonableness of present and future rates. A public utility company which goes on from year to year charging rates insufficient to pay a fair return cannot require future ratepayers to make good its loss of revenue. Nor can ratepayers successfully urge that rates be established at a level insufficient to produce a fair return because they, or other ratepayers who preceded them, paid too much in the past.

The view of the Supreme Court on this point is expressed by Mr. Justice Butler in an opinion where he said:

> The revenue paid by the customers for service belongs to the company. The amount, if any, remaining after paying taxes and operating expenses including the expense of depreciation is the company's compensation for the use of its property. If there is no return, or if the amount is less than a reasonable return, the company must bear the loss. Past losses cannot be used to enhance the value of the property or to support a claim that rates for the future are confiscatory. . . . And the law does not require the company to give up for the benefit of future subscribers any part of its accumulations from past operations. Profits of the past cannot be used to sustain confiscatory rates for the future.[1]

RECOUPMENT of losses suffered by utilities under inadequate rate schedules has been permitted only in a limited number of situations. In almost all these cases inadequate rates had been fixed by the commission, and in court proceedings or in subsequent commission proceedings the utility was allowed to amortize the deficit sustained under the rate schedules established.[2]

The basis for such allowances has been stated to be the fact that the loss was imposed by the direct action of the commission in compelling the utility to operate under inadequate rates. These rulings do not seem to help much when a utility has found that rates have become inadequate but has not had time to prove the need for advanced rates.

There have been a few exceptions to this statement. For example, a gas company had failed to earn a reasonable return on account of the lag in the time between the filing of an application for increased rates and the effective date of the decision. During this time the cost of oil exceeded the price which was the basis of existing rates. The utility was allowed to collect an additional rate in order to compensate for this loss.[3]

Then, too, in a recent case a Pennsylvania court held that the commission, after extensive litigation over rates filed by a public utility and complained of prior to their effective date, may, in the final order determine the reasonableness of the rate, properly determine what rates were reasonable for the period intervening between the inception of the rate litigation and the final order.[4]

THE majority of rulings have been against claims of utilities for recoupment of deficits by way of amor-

tization, whether the rates were established by the company or by order of a commission.[5]

The Georgia commission in one case remarked that the company under investigation had failed to earn enough for a certain period, under rates prescribed by the commission, to pay for actual out-of-pocket costs of the service. Nevertheless, no consideration was given to this loss in fixing future rates. The commission said:

> . . . equity and good conscience would require that such be done, yet it has been established by the courts of last resort that amortization cannot be forced and we will not exercise a discretion to make possible this authority.[6]

WHEN rates are attacked as excessive, in the absence of some special provision, the customers usually fare no better. Rates established by a commission continue to be the legal rates until they are changed, and it has been frequently held that no reparation can be awarded on the ground that such rates are excessive.[7]

Some disagreement is found in the decisions relating to the status of rates filed by public utilities. A distinction has been attempted to be made between "legal rates" and "lawful rates." One theory has been that rates legally filed are lawful rates and therefore no reparation can be awarded if they later be determined to be excessive.[8]

Another line of authority holds that a filed rate, while legal, becomes conclusively lawful only after its reasonableness has been determined by the regulatory authority, and if the filed rate, although legal in the sense that its collection is obligatory, is thereafter found to be unreasonable, the person damaged by its exaction is entitled to reparation.[9] The statutory provisions in a particular state would probably be a determining factor.

ONE remedy proposed, and in some states adopted, has been the establishment of temporary rates. They are effective during the progress of rate investigation and it is contemplated that if they are ultimately found to be too high or too low the evil may be cured. They are sometimes referred to as emergency rates, because an emergency is the occasion for their adoption.

The usual procedure in the case of an emergency rate increase is to authorize higher rates on a *prima facie* showing of necessity without a complete hearing and to require the utility company to put up a bond guaranteeing a refund to customers if the final decision is against the higher rates authorized.

On the other hand, when customers demand an emergency decrease, as a practical matter it is not feasible to require each customer to put up a bond guaranteeing the public utility

¶ *"THE usual procedure in the case of an emergency rate increase is to authorize higher rates on a* PRIMA FACIE *showing of necessity without a complete hearing and to require the utility company to put up a bond guaranteeing a refund to customers if the final decision is against the higher rates authorized."*

company against losses during the time when the lower rates are in effect. Therefore, some other solution must be sought in such cases.

EMERGENCY orders were demanded by the utilities during the rapidly rising price period of the World War and by the customers during the collapse of prices caused during recent years by the world-wide depression. The problems confronting the public utilities and the state commissions during the war period may conceivably be again faced in the event that there shall be a drastic inflationary movement in this country, as some fear. Then again the utilities may find it necessary to apply for emergency rate increases, in order to continue operation and to furnish the service which their customers demand, without waiting for the completion of extensive rate investigations.

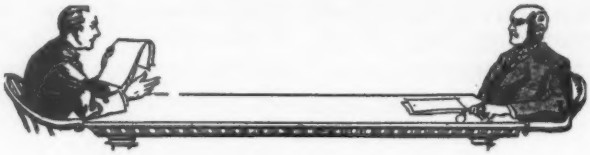
What amounts to an emergency warranting the ordering of temporary rates is a subject of dispute. A definite increase in operating costs has been looked upon as an emergency. A definite decline in operating costs might also constitute an emergency. But what about a rise or fall in property value used as the rate base? What about a change in the economic status of customers, in the absence of a proven change in operating costs? These questions seem not to have been settled by the courts, although a flood of emergency rate decreases has been witnessed during the depression—usually on the basis of customer wants and ability to pay, with some consideration of general price levels.

THE necessity for emergency rate increases during the war period was recognized not only by the commissions but by Federal officials. The Comptroller of the Currency of the United States made a statement that the work of war had thrown upon many of the utilities strains which they were unable to endure without prompt help. He said that it was essential that forbearance and consideration be exercised by the state commissions and municipal authorities and that the corporations be permitted to make such additions to their charges for service as would keep in them the breath of solvency, protect their owners against unjust loss, and give them a basis of credit on which they might obtain the funds with which to meet the strain put on them by the government's need.

The Secretary of the Treasury in a letter to the President of the United States declared that the local public utilities must not be permitted to become weakened. The transportation of workers to and from vital industries and the health and comfort of citizens in their homes were said to be dependent upon them, as well as the necessary power to drive many of the war industries.

Under these conditions the period of emergency rate increases got under way. A small return was not always accepted as a basis for emergency action, but operating losses were recognized as a valid basis for relief.

One commission expressed the opinion that an emergency which calls for immediate remedy exists, if, because of war, the operating expenses of a public utility are increased to such an extent—and with reasonable certainty of still further increases—that, after paying the same, the remaining revenues are insufficient to provide for



Reason for Temporary Rates

"INABILITY to remedy completely by retroactive action the injury caused by incorrect rates has been the reason for proposals to put into effect temporary rates whenever facts are presented which on their face make it appear that existing rates should be raised or lowered."

reasonable preservation of the property in use, the payment of governmental charges such as taxes, public improvement assessments, interest on lawfully issued bonds, contractual obligations such as reasonable rentals for property used and necessary in its business but not owned, and such a reasonable return upon owned property in use as will sustain its credit.[10] This seems to have been a guiding principle in the war cases.

To prevent injustice to ratepayers which would result from the payment of excessive rates during a rate investigation the plan has been followed in a large number of cases of requiring the utility company to impound the funds collected or to put up a bond guaranteeing a refund in the event that the rates are ultimately found to be too high.

The plan of permitting the utility to charge rates considered by ratepayers to be excessive has been attacked as unfair to the ratepayers, but whether the utility company or the ratepayers should carry the burden during rate litigation must be decided in a practical way. There is no escape from the fact that as a practical matter it would be almost impossible for a public utility company to recover from a large number of customers numerous small amounts which should have been added to their bill. On the other hand, as a practical matter, a public utility company can be required to hold disputed amounts in a separate fund or file a bond guaranteeing refunds and return excessive amounts collected.

There may also be some comfort for ratepayers in the collection of a substantial refund as in the Illinois Bell Telephone Case and more recently in the New York cases where the commission estimated that refunds by the Bronx Gas and Electric Company and the Yonkers Electric Light and Power Company would exceed $800,000. Moreover, the loss to customers from excessive rates may be spread so thinly over a large number of persons as not to be serious, while the loss from inadequate rates falling on a single utility may mean the difference between good service and bankruptcy.

HOW CAN RATES BE VARIED WITH CHANGING CONDITIONS?

To meet the objections against the continuance of rates which have apparently become excessive the plan of emergency or temporary rate decreases without a full hearing has now been tried in some states. Here constitutional difficulties have to be overcome. This is because customers and utilities are not exactly on a par under the Constitution—not because of discriminatory laws, but because of the nature of the case.

A public utility is compelled by law to furnish service. No customer is compelled by law to buy service. Hence the utility has a constitutional right to demand an adequate revenue from rates, for otherwise its property would be taken for public use without just compensation. On the other hand, a customer having the right to discontinue taking service is not deprived of his property by force of law if rates are set at an excessive figure.

Accordingly no great difficulty was experienced in providing for emergency rate increases, subject to refund if found excessive, while emergency decreases in rates had to be effected in such a way as to avoid constitutional objections that the utility was not accorded due process.

THE courts have announced the rule that inadequate rates cannot be justified under the Constitution by the claim that they are temporary or of an emergency nature. Such rulings, however, have been made in cases where no statutory plan had been devised for recompensing the utility company for deficiencies in earnings under the temporary rates.[11] Some states have, therefore, sought to provide a plan for recoupment of losses in order to avoid constitutional barriers.

The statutory course to be followed in New York is for the commission to order a rate reduction, effective until rates are finally fixed. The reduction order is based on a *prima facie* case showing original cost, less depreciation, and the return being earned on that rate base.

Constitutional objections that this is not a proper basis for rates are overcome by allowing the commission, in its final determination of rates, to take into consideration any losses sustained by the utility company during the proceedings. This provision is construed as permitting higher rates to be fixed in order to absorb such deficits. It establishes by statute a rule contrary to the usual principle that past deficits cannot be recouped by higher rates for the future.

RATEPAYERS who come on to the utility's system after the rate litigation may complain that they should not be compelled to pay rates sufficient to cover losses incurred because other ratepayers did not pay enough. The New York Court of Appeals disposed of this objection, when advanced by a utility, with the statement that a utility is not the proper party to make this objection as to discrimination between its customers. The matter was not left there, however, but Chief Judge Crane declared:

> True it is that all the consumers paying the final rate, including the take-up, may not be the same as those who paid the temporary rate. A few consumers may be new customers paying what the old consumer should have paid. Such instances are of minor importance; the percentage must be very small. We can never work our institutions of government if we refine matters to such an extent that we have to con-

sider all these little details. The Constitution expresses fundamental principles, and if in the main these have been observed, this is all that can be required. Besides, when we speak of the consumer—the customer—we mean the public, not individuals.[12]

Judge Crane's view as to discrimination between present and future customers is not entirely in accord with the views of some other authorities. A master in his report once said:

> It may be, as counsel for complainants suggest, that justice to the company requires that if the "public" at one time obtains gas through no fault of the company at less than a reasonable rate, the "public" at another time during a reasonable period should make good the loss. But this, it seems to me, is an argument which should be addressed to the commission and not to the courts. The public cannot sue or be sued. The public, in fact, did not use the gas of complainants during 1917 to 1920, inclusive. Thirty thousand individuals, more or less, used the gas during these four years, and over thirty-seven thousand individuals are using complainants' gas at this time. At least seven thousand of these had no part in the alleged taking of plaintiff's property without due process of law during 1917 to 1920, inclusive. Upon what correct principle of law can the courts now enjoin a rate fixed under legislative authority and compensatory at this time, when the effect of such injunction would be to require these seven thousand or more users of gas to pay complainants, in the form of increased rates, for gas which was used not by them but by others several years ago? [13]

SUCH a provision for temporary rate reductions has also been woven into the Illinois statutes. It is there provided that if the commission finds after an examination of the company's books, records, and reports that the net income of the utility after reasonable deduction for depreciation and other reserves is in excess of the amount required for a reasonable return upon the value of its used and useful property, and also finds that to determine all of the issues bearing on rates and service will take in excess of 120 days, the commission may after notice fix a temporary schedule of rates.[14]

The reduction made by such temporary order may not be more than the amount found to be in excess of a reasonable return upon the value of the property, and the temporary order may not remain in effect for a period of more than nine months after its effective date, and a further period not to exceed three months in addition thereto. It is provided by a section similar to the New York law that if upon the final disposition of the case the rates or charges as finally determined are in excess of the temporary rates, the commission shall allow the company to recoup the difference.

THE Illinois commission, in treating the constitutional question, said that no infringement of the company's constitutional rights arose in view of the well-established principle "that the protection utilities may have from rate regulation must come solely from a showing of confiscation and not from the legislative procedure

¶ *". . . whether the utility company or the ratepayers should carry the burden during rate litigation must be decided in a practical way. There is no escape from the fact that as a practical matter it would be almost impossible for a public utility company to recover from a large number of customers numerous small amounts which should have been added to their bill."*

adopted in the fixation of rates." The property of utilities, it was said, would not be confiscated in view of the provision that if, on final disposition of the case, a higher rate were fixed than allowed by the temporary order, the commission should permit the utility to recoup the deficiency.[15]

Important questions confront us in respect to these plans for emergency rate reductions. Courts insist that a public utility is entitled to a hearing before its rates are changed. This is a part of due process. In New York a sufficient hearing is deemed to have been accorded for the limited purpose of fixing temporary rates. It is unlikely, however, that if on the abbreviated hearing rates should be clearly shown to be confiscatory, the courts would uphold the temporary order even though recoupment will be allowed at some future time. Perhaps these orders will be governed largely by the rules that confiscation will not be assumed, that rates must be fairly tested, and that in border-line cases the courts will not interfere.

From the foregoing we may deduce certain conclusions as to appropriate and lawful methods of making utility charges reasonable, either at the time they are collected or by later adjustment. No adjustments may ordinarily be made because of improper rates in the past except for the period following complaint against the rates. The need of a public utility company for an increase in rates because of changing conditions may be met by authorization of an emergency increase, subject to possible refund. An emergency decrease in rates may be ordered, subject to possible reimbursement, if courts in other jurisdictions adopt the reasoning of the New York Court of Appeals—subject probably to a rule that no rate will be upheld if clearly shown to be confiscatory.

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[12] Bronx Gas & E. Co. *v.* Maltbie (1936) 271 N. Y. 364, 14 P.U.R.(N.S.) 337.

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Financial News and Comment

By OWEN ELY

Duke Power Company

DUKE Power Company, an independent utility system, furnishes electricity to the industrial sections of North and South Carolina, including the cities of Charlotte, Winston-Salem, and Greensboro in North Carolina, and Greenville, Spartanburg and Anderson in South Carolina, the total population served being estimated at over 1,500,000. Power is sold at wholesale to municipalities and to local distributing companies.

Properties include seventeen hydroelectric and seven steam generating stations, about two-thirds of the 1,046,970 h.p. installed capacity being hydroelectric. Through various interconnections the company's transmission lines are tied in with all the major power companies in Georgia, Alabama, Tennessee, and South Carolina.

The company was originally incorporated as the Wateree Electric Company in 1917, the present title being assumed in 1924. It operated largely as a holding company until 1935, when operating subsidiaries were absorbed with the exception of two nonutility companies (Mill Power Supply Company and Superior Yarn Mills, Inc.).

The company's name has appeared at intervals in press headlines during the past few months due to its suit to enjoin PWA from making a loan and grant to Greenwood county, S. C., for construction of a power plant at Buzzard's Roost, which was considered a "test case" for the industry. The company also brought suit in December to prevent PWA from granting $2,595,000 for the proposed High Point municipal hydroelectric plant on the Yadkin river.

The company is conservatively capitalized, funded debt amounting to $38,000,000 against total assets of about $211,000,000 (December 31, 1936, balance sheet). There are outstanding 2,837 shares of 7 per cent preferred stock and 1,010,049 shares of common stock. A substantial amount of the common stock and bonds is held by the Duke Endowment, a trust fund established by the late James B. Duke (tobacco and power capitalist) for the benefit of various public institutions in the Carolinas.

THE company has enjoyed an excellent record in the past decade, as follows:

	Common Stock Record		
Calendar Year	*Earned Per Share*	*Paid Per Share*	*Approximate Price Range*
1936	$6.39	$3.00	85-66
1935	4.19	3.00	67-37
1934	2.90	3.75	58-38
1933	3.99	4.25	76-40
1932	3.62	5.00	74-31
1931	4.89	5.00	145-64
1930	5.94	5.00*	209-111
1929	8.58	5.75**	325-120
1928	8.67	4.00	157-130
1927	6.48	3.00	

* Also a stock dividend of 2 per cent.
** Also rights.

The excellent gain reported in 1936 was due to an increase of about 13 per cent in gross revenues—obtained despite material rate reductions made during the year—together with a reduction of about one-third in interest charges after re-

funding operations. During the year the company sold $30,000,000 3¼s of 1967 at par, also borrowing $9,000,000 on notes of which $4,000,000 was paid off. The $8,000,000 refunding bonds of 1967 carry a 4 per cent coupon.

As of December 31, 1936, the company had cash and marketable securities of $3,943,697 and total current assets of $12,585,922 compared with current liabilities of $8,199,558. The latter, however, apparently included $5,000,000 4 per cent notes due January 1, 1946, and payable at the option of the company at any time on or after January 31, 1938. Omitting this item, which might logically be included in funded debt, the current ratio was nearly four to one.

Because of the small floating supply the common stock does not enjoy a very active market on the New York Curb. It is currently selling around 70 (1937 range, 79-70), at which price the yield is about 4.3 per cent. Considering the earnings record, the stock would not seem overvalued at the present level, which is equivalent to about 11 times the 1936 earnings. The rapid growth of industry in the Carolinas, including textile and paper mill developments, seems to indicate further expansion in earning power, although possible competition from Federal power projects (including the $37,000,000 Santee-Cooper hydroelectric project, now in litigation) somewhat beclouds the company's future.

New Financing

NEW financing has continued light because of the unsettled conditions in the bond market. No utility issues appeared in the week ended March 5th and the Philadelphia Electric issue was the only offering in the week of March 12th. Only a few issues appear to be scheduled for the remainder of March, including $3,500,000 Hartford Electric Light Company debenture 3s of 1967; $2,000,000 Connecticut Power Company first and general "B" 3¾s of 1967; $1,022,000 San Jose Water Works first "A" 3¾s of 1961; $14,000,000 Iowa Public Service Company first 3¾s of 1967 and $2,200,000 debenture 3–5s of 1938–47; $7,250,000 Southwestern Light & Power first "A" 4s of 1967; $24,000,000 Panhandle Eastern Pipe Line Company first "A" 4s of 1952; and $31,000,000 Detroit City Gas Company first 4s of 1957 and $5,000,000 4 per cent notes of 1938–47.

The $130,000,000 Philadelphia Electric 3½s were offered at 102½ on March 11th by a nation-wide group of 600 dealers, the underwriting syndicate being headed by Morgan Stanley and Co., Inc. Despite the period of consolidation which the bond market had enjoyed recently, the "sit-down strike" on the part of buyers was still in evidence. While eastern insurance companies were large buyers, due to accumulation of funds and replacement, the demand from commercial institutions and private investors proved somewhat disappointing. Unfortunately also, offering of the bonds coincided with a renewed decline in the general bond market. However, it was estimated that about 80 per cent of the distribution was completed the first day, which was a creditable showing in view of the size of the offering and the conditions prevailing. While a syndicate bid of 102½ has been maintained, a few bonds have been available at concessions of about a point in the over-the-counter market.

Will the Bond Market Rally?

THE decline in the bond market since January 1st has been somewhat exaggerated due to the sharp readjustment in tax-exempt issues. According to the Dow Jones index, the average yield on twenty 20-year municipal bonds has risen from about 2¾ per cent to 3 per cent, representing a price decline of over 8 per cent. But on the other hand, the average price of all bonds listed on the New York Stock Exchange only declined from 97.35 as of January 1st to 96.64 on March 1st, a decrease of only about three-quarters of a point. This compared with a dip in the Dow Jones 40-bond average (during January and February)

of about 1.5 per cent (during the first twelve days of March about another point was lost).

The decline in bonds appears to have been due largely to psychological causes, since the second increase in reserve requirements was successfully met several weeks ago without any strain upon the banks, and reserves have since resumed their rising trend due to the continued influx of gold from abroad. It is true that the banks are finding increased use for their funds in commercial loans but the rate of increase is not unduly rapid. Total loans of reporting member banks have increased in the past year only about $535,000,000, and "new money" financing (as distinct from refunding operations) amounted to less than $1,000,000,000 in 1936, compared with an average of $2,000,000,000 – $3,000,000,000 in 1924–28.

However, the report of New York city reporting member banks is perhaps more significant. These banks have reduced their holdings of government bonds $615,000,000 since July 1st last year, while "other loans" have increased $317,000,000 since the low point of last July 29th.

While the bond market has probably "turned the corner," there seems no reason to anticipate a continued rapid decline. A moderate rally in the next few weeks appears likely.

Bell System Report

AMERICAN Telephone and Telegraph's annual report for 1936 contains an interesting array of tables and charts, portraying the tremendous growth of the Bell System since 1900. Since that year the number of telephones in use (including connecting phones) has increased about 15 times; the number of stockholders about 65 times; and the number of long-distance telephone messages about 40 times (these comparisons, based on chart inspection, are quite approximate). The recent depression affected all three items, but merely served to offset the over-rapid growth of the twenties. The number of long-distance messages was reduced about 30 per cent, but by 1936 had recovered almost all the lost ground; but the gain in number of telephones was somewhat less impressive, 1936 being slightly below the 1928 level. The number of stockholders (stimulated during the early years of the depression due to the popularity of Telephone as a high-yield investment) has declined moderately during 1933–36 but is still about one-third above the 1929 level. It is interesting to note that men hold only one-third of the total stock, women 57 per cent, and trustees, joint accounts, etc., the remaining 10 per cent.

The report also indicates the technical progress made in handling long-distance calls: The average number of minutes required to establish a connection has been reduced from about five and a half minutes to one and a half; while the percentage of calls handled with the customer remaining at the telephone has increased during the decade from 40 per cent to 92 per cent.

The average charge for service between the twenty largest cities in the United States has been quite steadily reduced from $7.50 in 1916 to $2.80 in 1936 (including the reduction effective January 15, 1937). The average airline distance for these calls is 970 miles. Long distance conversations gained 12 per cent last year compared with 7.6 per cent for local calls.

ANOTHER chart portrays the growth in the total plant investment during 1920–36. In 1936 the break-up was approximately as follows:

Land and buildings	$ 600,000,000
Underground plant	800,000,000
Aerial plant	1,200,000,000
Central office equipment	1,100,000,000
Subscribers' station equipment	600,000,000

The Bell System maintains a 5-day 40-hour work week with minor exceptions.

The company's detailed income statement reveals a moderate reduction in depreciation expense, the decrease amount-

ing to $7,750,286 or about 4.6 per cent. About 16.1 per cent of gross revenues was appropriated for depreciation, compared with 18.4 per cent in 1935. On the other hand maintenance expenses were increased $9,426,679. On a consolidated basis net income increased from $7.12 per share in 1935 to $9.89 in 1936, on average number of shares outstanding.

The Bell System reports a net gain of 92,200 telephones in February, 1937, compared with gains of 95,600 in January and 66,400 in February, 1936. According to Dow Jones, the growth of the business has been so rapid, exceeding expectations, that American Telephone and Telegraph Company may decide to resume its traditional policy of financing capital expenditures through sale of common stock, with rights to stockholders. Such financing, however, would largely depend upon whether business continues to accelerate at the recent pace. Working capital remains ample for the present and system funded debt was reduced about $33,000,000 in 1936. Sales of Western Electric Company, which to some extent gauge the rate of telephone expansion, gained 40 per cent last year.

Standard Gas Reorganization Plan Expected Soon

A REORGANIZATION plan for the $650,000,000 Standard Gas & Electric system is expected to be forthcoming in the near future. According to Dow Jones, the reorganization proposal includes reclassification of the funded debt (the $74,000,000 6s to be offered new bonds, probably bearing a 4½ per cent coupon), payment of the dividend arrears on the first preferred stocks in common stock, and exchange of the second preferred for common stock.

To offset the reduction in the interest rate on the notes, it is reported that noteholders will be given the privilege of converting half of each new bond into certain common stocks of system subsidiaries or other companies in which Standard Gas has holdings, the conversion privilege being of immediate value; and the new bonds would also carry a warrant to purchase common stock of a Standard property at some later date. The conversion offer will, it is said, include such stocks as Philadelphia Company, San Diego Gas & Electric, and Pacific Gas & Electric. Should bondholders make the conversion, the parent company's interest requirements would be reduced nearly two-thirds to around $1,660,000.

The two first preferreds would probably remain unchanged, with arrears ($21 on the $7 preferred and $18 on the $6) adjusted with common stock. The 4 per cent preferred, of which there are 757,442 shares outstanding with $15 arrears, would probably be retired by offering common stock in exchange.

THE preliminary income statement for Standard Gas & Electric for the calendar year 1936 indicates that interest was earned 1.12 times while $7.65 per share was earned on the combined prior preferred issues and 50 cents a share on the $4 preferred.

It is thought that the reorganization plan when presented to the Court for approval will be accompanied by a compromise settlement of the Delevan Corp., lawsuit for $100,000,000 recently started against H. M. Byllesby & Co., Ladenburg, Thalmann & Co., and U. S. Electric Power Corp., as well as certain officers and managers of Standard Gas.

The company has been under 77-B for about a year and a half due to failure to carry out a plan for extension of $25,000,000 notes—despite the fact that interest had been earned regularly during the depression.

Earnings Reports

REPORTS of 1936 earnings, released since the last issue of the FORTNIGHTLY, include the following:

Edison Electric Illuminating Co. of Boston covered fixed charges nearly three times and earned $8.38 per share on the capital stock, as compared with

$9.42 in 1935. Net income after charges increased slightly, due to increased gross and reduced interest, but the outstanding number of shares was larger, reducing the per share figure.

Long Island Lighting Company in the twelve months ended December 31st earned fixed charges about 1½ times; $8.18 per share on preferred stock was reported, compared with $9.49 in 1935, and 16 cents per share on common, against 27 cents. Total revenues declined slightly, doubtless due to rate cuts, and expenses increased. The company has recently announced another reduction in electric rates which it was estimated would save consumers over $641,100 a year. Moreover, the reduction is retroactive to January 31, 1936. The balance sheet as of December 31, 1936, contained a "special reserve for rate decision" amounting to $451,856.

Public Service Company of Northern Illinois in 1936 earned fixed charges 1.65 times, $24.40 per share on preferred stock, and $4.50 per share on common, the latter comparing with $3.78 in 1935.

SOUTHERN California Edison Company, Ltd., earned fixed charges 2.71 times in 1936, and preferred dividends were covered about 2.5 times. Earnings per share on common stock were $2.45 compared with $1.64 in 1935. Gross revenues established a new record, with a substantial gain over 1935, which, however, was largely absorbed by increased expenses and taxes.

Western Union Telegraph Company, with a gain in gross revenues of nearly 10 per cent in 1936, covered fixed charges 2.46 times compared with 1.99 in the previous year. Earnings per share were $6.89 against $5.03.

North American Company's 1936 earnings on common stock have been estimated by Dow Jones at about $1.75 a share, compared with $1.35 in 1935, and $1.60 for the twelve months ended September 30, 1936. The annual report is expected to be in stockholders' hands about the end of March.

Hudson & Manhattan Railroad Company reported a net loss for 1936, after interest on adjustment income bonds, amounting to $447,758 which was somewhat less than the 1935 loss of $488,224.

Among January returns now beginning to appear, Commonwealth & Southern Corporation and subsidiaries reported 14 cents a share earned on common stock compared with 1 cent in the corresponding previous period. January gross showed a gain of about 12 per cent over last year, and net income gained about 45 per cent (subject to tax adjustments).

KANSAS City Power and Light in 1936 reported $8.51 per share on common stock against $6.45 in 1935.

Federal Light and Traction Company and subsidiaries reported net income for the fiscal year ended December 30, 1936, of $1,607,383 compared with $1,344,465 for the preceding fiscal year. At the annual meeting, President Nichols told stockholders that no dividend was likely to be paid on common stock this year, income being used for reduction of bank loans and construction work. Bank loans were reduced to $500,000 during 1936. The company is planning no refunding operations, since registration might prove impracticable at present. Questioned regarding relations with Cities Service Company, Mr. Nichols stated:

> Cities Service has never diverted 1 cent from this company's earnings, and has not charged for the technical services and advice it has given to Federal Light, except where such services have been requested and a man was taken off another job to help Federal's management. No subsidiary has ever received gentler treatment from its parent company, and if Federal Light had not had Cities Service behind it, Federal would have been sunk.

Central Hudson Gas & Electric Corporation in the calendar year 1936 showed income of 97 cents per share on 1,500,000 shares of common stock, compared with $1 earned in 1935.

Middle West Corporation, according to President Green, on the basis of preliminary figures earned about 50 cents a share on capital stock, after deducting unearned dividend requirements on preferred stocks of subsidiaries; before such deductions, the earnings would have

amounted to about 65 cents a share.

Philadelphia Company (preliminary report) showed profits of $8,599,609 for 1936, compared with $8,004,608 in 1935.

International Paper & Power Recapitalization

INTERNATIONAL Paper & Power Co. has filed with the SEC a plan for recapitalization on which hearings are to begin March 29th. The company formerly had indirect control of power companies in this country and Canada through International Hydro-Electric System, and sometime ago applied for exemption as a holding company under the Utility Act. Since this has not yet been granted, the company has decided to "play safe" by taking its plan to the SEC.

The new plan, which is also subject to approval by stockholders and directors, would reduce capitalization about $29,200,000, thus turning the present balance sheet deficit into a surplus. The large back dividends on preferred stocks would also be eliminated. The stated value of common stock would be reduced from $52.50 to $15 a share.

Under the plan, a holder of one share of the 7 per cent preferred stock will receive one share of new 5 per cent preferred and one share of common; each share of 6 per cent preferred would obtain one share of new preferred and three-fourths share of new common. The new preferred would be convertible into 2½ shares of common after October 15, 1937. Each share of Class "A" common would obtain eight-twentieths share of new common and a warrant to buy twelve-twentieths share of common. Class "B" common would receive six-twentieths share of common and a warrant for nine-twentieths shares; while for Class "C" the amounts would be three-twentieths and nine-fortieths, respectively. Giving effect to various exchanges and adjustments, the new company would start with a surplus of over $9,000,000, permitting payment of dividends on the new stock.

International's estimated system profit of $4,800,000 for 1936 compares with a loss of $3,323,432 for 1935 and losses in 1931–34. A substantial gain appears likely in 1937, despite continuance of a disappointing price-level for newsprint.

Corporate Notes

BROOKLYN Union Gas Company reports that domestic gas appliance sales are running at record levels and are about 40 per cent over those of a year ago. President Page told stockholders at the annual meeting that thus far the company had found it impracticable to carry through a refunding program on its 5–6 per cent bonds. While earnings in 1936 declined, the $3 dividend rate would be continued so long as earnings and prospects warranted, according to the president.

The proposed plan of recapitalization submitted to the SEC by Illinois Power & Light Corporation would place control of that system in the "open market," according to Dow Jones. It is now affiliated with North American Light & Power Company which in turn is controlled by North American Company. The plan would facilitate the payment of $24 in arrears on preferred stock and the refunding of over $100,000,000 bonds, clear up a surplus deficit, and permit an earnings return on the common shares. The plan, if consummated, would leave the North American System with a 24 per cent voting interest.

Cities Service Company is planning the expenditure of $42,000,000 for construction work in 1937, of which $18,000,000 will be for utility plants.

Consolidated Edison Co. has reduced gas rates by an amount estimated at $630,000 per annum. The company apparently need not fear threatened legislation at Albany in support of Mayor LaGuardia's project for construction of a municipal power plant. While the mayor has been active in seeking a sponsor for his proposal, members of both parties have thus far refused to father the legislation.

What Others Think

WPA Presents a Kilowatt Melodrama

When the first very tabloid type of daily paper appeared in New York, old line newspapermen scoffed. Today, tabloids have not only cleaned up in the metropolitan area, but are moving into other large cities. Tabloids were designed mostly for the multitude of good folks who do not read a great deal and therefore do not read easily—the folks who cannot read without moving their lips, for example. (Or, as a cynical journalist once suggested, for folks who cannot read at all.)

These humble but worthy citizens who perhaps did without newspapers in the more literary past of the Fourth Estate, prefer to receive their news in little shocks, so to speak, to stimulate their minds long enough to grasp the general importance of the passing news item. Thus we have such bold-faced and bannered phrases as "Tub Slayer," "Torso Hacker," "Ax Fiend," etc., lavishly illustrated by frank photographs of gruesome accidents, more gruesome crimes, and, of course, the inevitable winsome lassies not overdressed. Even for romance, these multitudes of workaday folks must live vicariously in the filmed adventures of glamorous Hollywood stars—just a release for two hours from the more drab monotony of everyday life.

It is somewhat ironic, but nevertheless interesting, that the Federal Theatre Project, a Works Progress Administration unit, decided to transfer the tabloid technique to the speaking stage—of all places. The speaking stage, driven to retreat in its Broadway stronghold by the devastating competition of the more popular (and popular priced) talking picture, had heretofore affected, to some extent, the pose of the sophisticate. The cinema might do very well for the yokel and the provincial, but the stage, it was agreed, was the refuge of the intellectuals. This was making a virtue of a necessity, perhaps, but now even this doubtful consolation is threatened by the recent invasion of very obvious proletarian drama, under the personal direction and supervision of none other than our old friend, Uncle Sam.

The WPA unit has been presenting, in a certain New York theater, a series of Living Newspaper plays. Each play deals with a different subject of current interest and importance, and the form is rather hard to describe. It is a sort of combination lecture, musical comedy, and magic lantern show. This may sound like a nightmare, but it is remarkable how well and coherently the WPA technicians manage to develop their subjects.

The series, as the name "Living Newspaper" would imply, includes subjects of passing news developments of lasting significance. The underlying policy of the WPA producers seems to be to look out for the interest of their boss—the taxpayers—with, of course, many a pat on the back for the administration now in office.

The latest chapter in the Living Newspaper series is called "Power" and is designed to educate its audience in the subject of electricity from the doings of Faraday to the doings of Roosevelt. The show starts off with a recital of how important elctric power is in a modern city by depicting the panicky scenes that attended a general breakdown in a large city. Then follows a brief historical background and technical explanation in which such pioneers as Thomas A. Edison, and such symbols as the "kilowatt" are explained in terms that should

understandable to a normally bright 5-year-old. The scenes move hurriedly to more current matters and end up glorifying the TVA, and virtually defying the Supreme Court to do anything about it.

In spirit, "Power" is propaganda of a frankly impartial and naïve sort. The hero is Senator George W. Norris of Nebraska; the villian is the utility holding company (which was literally depicted as an octopus in one scene). The comic relief is designed to ridicule the private industry and sometimes, taking it at its face value, it is pretty good. The scene showing a holding company executive selling himself a piece of overvalued property by switching chairs and changing his own voice is really funny. It is funny, of course, aside from its social implications. It would be funny if it were an Arab in Timbuktu selling himself a camel. That the comedy carries with it the social argument is simply the effective art of the propagandist.

UNDERSTAND, "Power" is not great art — unless one belongs to the more recent Clifford Odets' school which apparently believes that inciting the audience to riot is good theater. "Power" will scarcely be remembered as anything more than an interesting, but biased, exposition of an important subject of public interest. The better informed witness would be interested chiefly in the technique—in the skill with which an inherently dry subject is dramatized, as well as simplified. However, here is a passage from one of the flag-waving scenes which shows why this reviewer believes "Power" will not linger long on the tablets of memory:

My name is William Edwards
I live down Cove Creek way
I'm working on the project
They call the T. V. A.
The government begun it
When I was but a child
But now they are in earnest
And Tennessee's gone wild!

All up and down the valley
They heard the glad alarm
The government means business
It's working like a charm
Oh, see them boys a-comin'
Their government they trust
Just hear their hammers ringing
They'll build that dam or bust!

Looking at the production more objectively, the sensitive taxpayer may squirm at the idea of the government spending money to "condition" the mass mind to the end that its political policies may be approved and its exponents perpetuated in office. The private utility executive, fretting at the obvious bias, may also be irritated at the thought of what a howl the industry's critics would raise if the Edison Electric Institute should sponsor a similarly elaborate piece of propaganda, which doubtless could be done with about equal effectiveness if money and talent were forthcoming.

HOWEVER, taking a broader view, the history of the stage would indicate that when propaganda treads the boards, art is less spontaneous and the muse has to work extra hard. A naturally comic situation becomes just a little less funny when hooked up with some concealed argument. The French playwright, Moliere, who brought the art of political satire to a peak probably never equaled before or since, recognized and openly conceded that true art must be free to go where it will. This hardly ties up with a lobbyist in the prompter's box, whether he be bureaucrat or tycoon. And Shakespeare, who was not above carrying the cross for the good cause on occasion, reached his greatest heights in dramas of romance that quite obviously wrote themselves.

If further proof were needed, one might consider the incredibly ridiculous results accomplished by the proletarian dramatic butchers of the Moscow theater who have actually undertaken to write their collectivist obligato into some of the very scripts prepared by the Bard of Avon. Even Hollywood, often criticized for its preoccupation with unreal and inconsequential situations of the penthouse variety, has generally sidestepped the rôle of political propagandist, possibly from fear of having its stars transferred in the public minds

Rochester Democrat and Chronicle

LOOKING TOWARD THE PROMISED LAND

from romantic entertainers to tiresome scolds.

Again, propaganda on the stage has a way of stalemating itself in rather small circles. It is likely to turn out something like this: This season the Whites have all the better of it, poking fun at the Blacks. This drives the Blacks to indignant coalition and, in turn, the Blacks shoot their side of the story over the footlights. Thus it goes, with pleasant satire rising to boiling rage until the confused proletariat is likely to end it all by saying in effect, "a plague on both your houses"; and thereupon proceed to spend his 50 cents at the Brothers Minsky Temple of Burlesque, where he probably would have gone in the first place had he not fallen among bickering bores.

All of which is by way of concluding that Uncle Sam's kilowatt drama, while of considerable interest and merit for its type, probably does not mark the beginning of an era of tabloid drama designed to hasten the social revolution. The explanation may be that a particular story in the theater is something like a match. You can only use it once very effectively.

—F. X. W.

POWER. A presentation of The Living Newspaper, a Federal Theater Works Progress Administration project, at the Ritz Theater, New York, N. Y. Opening Feb. 23, 1937.

Dr. Bauer on Public Ownership

As late as December 7, 1933, Dr. John Bauer, noted utility economist, writing in PUBLIC UTILITIES FORTNIGHTLY, found it "attractive to visualize the institution of outright public organization" for utility service, but added that "however attractive such a direct course may be, it has its own difficulties which must be balanced against the obstacles of trying to convert private organizations into satisfactory public agencies." He found it improbable that utilities could be generally transferred into municipal systems within a few years and further observed, "that they should be so converted throughout is extremely doubtful." He then concluded that "under present and prospective conditions private operation is probably more efficient if the management centers its attention on operation instead of stock markets."

However, subsequent happenings (maybe the depression or the New Deal) seemed to have converted Dr. Bauer from a doubting Thomas to a zealous advocate of public ownership of utilities. He has since become an associate editor for *Public Ownership*, the organ of the Public Ownership League of America, and appeared as a principal speaker before the national conference of that organization held last fall at Springfield, Ill.

Indeed, it is difficult to conceive of more sincerely argued reasons for public ownership of utilities than those contained in Dr. Bauer's Springfield address; and if, as the Bible tells us, there is more joy in heaven over a single convert who sees the light than for the many just who are already saved from error, the Springfield gathering of public ownership advocates must have been further heartened by the zeal and vigor of this speaker.

DR. Bauer got under way by describing the two conflicting camps of economic thought: (1) those, including "many intelligent people" who believe that all private organization is "unsuited to modern technology and public need and that all economic activity should be directly organized collectively," and (2) those, including "entrenched finance and industrial interests," who seek a free hand to "do as they please," in order to obtain promised public benefits. Aside from this smile to the Left and a frown for the Right, Dr. Bauer eschewed both extremes but concluded that there must be more "government control in the interest of the public at large." The real question before us, he stated, is "how can such control be attained most readily under American conditions?"

Regulation of the accepted form has been "almost generally unsuccessful," said Dr. Bauer, even outside of the public utility field. And it is all due basically "to the underlying conflict between private and public interest." Industries organized for profit motives will, under economic pressure, resist public restraint. This makes the job of regulation necessarily a continuous battle instead of an accepted and respected function of government. For this reason, Dr. Bauer felt that "any industry that involves fundamental public interest" is

better organized publicly so that the government as operator can plan and administer without the endless hindrances of private opposition.

ANOTHER advantage of such public organization given by Dr. Bauer is its probable use as a solution for unemployment:

> . . . for economic stabilization and progressive advancement for the masses of people there must be, first of all, real institution of economic security, and this means jobs for everybody in useful work. To assure full employment under reasonable conditions, requires systematic planning, organization, and direction. This can be accomplished without great or insuperable difficulty by outright public organization, but can hardly be attained at all through government regulation of private business.
>
> The efforts of the Roosevelt administration have furnished rather conclusive test of experience as to whether employment can be stabilized and assured through regulation of private business. The NRA organization was primarily an effort to regulate private business so as to assure jobs for everybody under stable and progressive conditions. Actual experience practically demonstrated that such national control could not be successfully carried out because of constant and grave divergence between private and public interest. While employers as a whole would doubtless be benefited by such long run policies as the NRA sought to establish, individual industrial and commercial units in the vast network of coördinated enterprises would profit from evasion. Before the fateful decision by the Supreme Court, NRA had practically broken down because of resistance by the hundreds of thousands of individual business units whose profits were affected by the new system of public control. The experience was fully in line with that of public utility regulation.
>
> If there is to be assurance of jobs for everybody, the responsibility must be directly assumed by government through suitably planned activities carried out directly by government itself. Such important responsibility cannot be left satisfactorily to private business placed under governmental control.

Dr. Bauer also urged public ownership and operation of banking, stating that "if there is to be a stable and adequate monetary system it must be taken over directly and in its entirety by the government." This would allow the monetary system to be planned and directed systematically to national purposes.

Beyond this point, Dr. Bauer said that no one could, at this time, definitely specify in detail just what other types of enterprises should be "publicly organized," but he did not hesitate to say that attempts at regulation of any of them are "likely to be unsatisfactory." Furthermore, "fundamental responsibility for economic stability and security must be assumed by government." Public utilities, banking, and inherently monopolistic industries, however, were definitely ticketed for public ownership.

SUMMING up Dr. Bauer's address, it struck this reviewer that it left unanswered the query whether public ownership in the industries mentioned could be trusted to match or exceed, technologically at least, the standards of actual accomplishment of private enterprise to date. We do know at least that this profit system with all its faults has given us the America we have today—our great cities, wonderful industries, improved standards of individual living, etc. Public ownership and operation still have to make out their case. They seem to be doing well in Russia but the evidence isn't all in on that case yet and before it is we may even find quite a different government in Russia than Lenin and Trotsky founded. In short, when public ownership advocates speak so confidently about its superior economic virtues, isn't it apropos to remark, "Let him boast who taketh off his armor"?

Of course, it may be reasonably argued (and doubtless has been) that while public ownership may be shy on pioneering and promotion as compared with profit-minded entrepreneurs, there comes a time in the affairs of modern nations and (at least some types) of modern business when public interest requires that the government should take over; and that for this task public organization is well if not better suited. As Tennyson once said of the fair sex: "When did woman ever invent? But they hunt old trails very well."

As for the value of government dom-

ination of banking in order to maintain a "stable and adequate monetary system" that can be "planned and directed systematically to national purposes," it would appear that Messrs. Stalin and Hitler have also discovered the advantages of this arrangement. However, it is still very doubtful whether investment in trick marks and fake gold rubles should be made legal for savings banks in Connecticut.

—M. R. K.

FAILURE OF REGULATION IN THE AMERICAN ECONOMY. Address by Dr. John Bauer before conference of Public Ownership League of America. Springfield, Ill. October 15-17, 1936.

The Federal *vs.* New York Commission

STATE and Federal utility commissions alike (to say nothing of the utility companies they regulate) were doubtless interested in the recent exchange of correspondence between the chairman of the Federal Power Commission, Frank R. McNinch, and the chairman of the New York Public Service Commission, Milo R. Maltbie. The original setting for this dispute happened in Washington, D. C., December 10, 1936, when Chairman Maltbie was called before a subcommittee of the Committee on Appropriations for the House of Representatives to discuss the proposed appropriation for his board which was included in the Independent Offices Appropriation Bill for 1938.

In the course of Chairman McNinch's testimony, Representative Fitzpatrick (Democrat) of New York asked whether the FPC was prepared to give information as to distribution cost per kilowatt for electric service throughout the country. The chairman replied that the commission was unable, because of almost prohibitive expense that would be involved, to give such information on every community in the United States, but that it had undertaken to give such data on certain typical communities and that the same had been published by the commission.

Representative Fitzpatrick wondered why New York city had not been so studied. It seemed easy enough to him. "You have the actual population, the amount distributed, and the actual cost," he told FPC Chairman McNinch (Chief Engineer McWhorter and Solicitor DeVane, also of the FPC, on the sidelines). "I should think it would be easy to get it and it would be very important."

HE failed also to see why a distribution cost study for New York city would be "so expensive." When Mr. McWhorter suggested that distribution costs to an industrial concern would be enormously less than to a house in an outlying section, Representative Fitzpatrick objected that there are no outlying sections in New York city and reminded the FPC engineer "when you try to pick out an isolated home in the suburbs, you are not giving a fair picture." With this advice to the FPC from the learned Representative, let us pick up the dialogue as reported in the record of the subcommittee hearings:

MR. FITZPATRICK. What is the explanation for charging 5 or 6 cents where we use so much, while in the smaller sections and smaller communities they are charged so much less?

MR. DEVANE. We answered that when this bill was before Congress, and the answer is that the cause of the higher rates in New York is that the consumption per kilowatt hour is about the lowest of any city in the United States.

MR. FITZPATRICK. In the residential section, as I recall, we have to pay 5 or 6 cents per kilowatt hour, and there are places that are much smaller where they only have to pay 2 or 3 cents.

MR. McNINCH. The average domestic consumption in New York city is lower than the general average for the United States.

MR. McWHORTER. It is only about 40 kilowatt hours per month.

MR. McNINCH. That is approximately 500 kilowatt hours per year, whereas the na-

St. Louis Daily Globe-Democrat

THE LATEST WHITE HOUSE RABBIT MAKES THE SPOTLIGHT

tional average of domestic customers is now about 700 kilowatt hours per year.

MR. FITZPATRICK. But where there may be comparatively few people using it in the smaller communities, there is an enormous number who use it in New York city. Why should it not be cheaper there?

MR. McWHORTER. It would seem it should be; they ought to have a lower rate; there is no question about that.

MR. FITZPATRICK. That is true in all businesses except in that particular line.

MR. McNINCH. In our rate study New York city did not show up so well by comparison with other communities.

MR. FITZPATRICK. Take the amount of money paid in that great city, as compared with the amount paid in any other part of the country; how does that stand?

MR. McNINCH. Of course, it is considerably greater. We do not understand why the rate is as high as it is.

MR. FITZPATRICK. That is why I am asking you, why do you not understand that?

MR. McNINCH. We made a study of rates for New York city, and that is covered in that report; the cost of generation and transmission is not particularly high. Of course, those who have to do with the management of companies in New York might not agree with the results of our study, but we are satisfied it is fair.

MR. WOODRUM. Do you have any control over the rates?

MR. McNINCH. No sir; we have no control over the local rates.

MR. FITZPATRICK. But you can make recommendations?

MR. McNINCH. I doubt the propriety of the Federal commission, when it has no authority over local rates, undertaking to recommend to a state commission specific rates.

MR. FITZPATRICK. But if you gave them the statistics showing the facts, would that not be of some assistance?

MR. McNINCH. They do have the full benefit of every study we have made, including that of rates and the cost of distribution.

MR. FITZPATRICK. Have you ever made a study of the cost of distribution in the larger cities, as compared with that in the smaller communities?

MR. McNINCH. In several of them; yes, sir. We will be glad to make that report available to you.

MR. FITZPATRICK. In my home, for instance, it costs me $4 to $6 a month. In a small community in the state, in a house with twice as many rooms, they pay about one-third of what I pay. And yet I live where there are millions of consumers.

So it seems to me there is something radically wrong there. I pay about 5 or 6 cents, and they pay 2½ or 3 cents.

MR. McNINCH. My reluctance to make a direct observation further than I have about rates in New York is because they now have in the state of New York a commission to take care of that. The state of New York has put the responsibility for the regulation of those rates upon the state commission, and as a Federal commissioner, with no authority, it would not be justifiable for me to say that specific rates should be lower than they are. I only say they appear out of line and higher than rates elsewhere.

FROM this it will be seen that Chairman McNinch did not actually go out of his way to reflect either on the electric utilities serving the metropolitan area nor the state commission, whose duty it is to regulate them, but rather was forced by cross-questioning by a member who obviously did not understand very much about electric rate economies, to compare the New York rates with rates elsewhere. Possible reasons for the alleged differentials between New York rates and national rates apparently did not impress (nor interest greatly) the Representative. In any event, the result was a statement by Chairman McNinch that New York rates appear "out of line and higher" than rates elsewhere and it was publication of that statement that aroused Chairman Maltbie, who dispatched the following telegram to Chairman McNinch:

> Press reports you as stating electric rates in New York city are excessive and should be reduced. If you have legal proof to support this allegation public service commission will gladly hold a hearing at your convenience to receive testimony. We have been proceeding in manner provided for by law to determine reasonable rates, and reductions in New York city alone during the past month aggregated about $7,000,000. Please reply promptly at our expense.

It might have been expected by some that Chairman McNinch, in answer to Chairman Maltbie's telegram, would confine himself to pointing out the general circumstances attending his original statement, the qualifying context, and the general spirit of the testimony. He did this to some extent, but it caused surprise in some quarters that he followed up these observations with modified acceptance of Chairman Maltbie's challenge. The McNinch reply was in part as follows:

> Your telegram expresses a willingness on your part to have me appear before your commission to testify. It is thought that, after you have read the transcript of my testimony before the committee and learned that all of my statements were temperate and wholly free from either criticism of or discourteous reference to you and your commission, you may conclude that my appearance is not required and that such a procedure might be unseemly.
>
> However, if it is your considered desire to have me appear, I will do so, with the understanding that you assume sole responsibility for such an extraordinary procedure. Only on this basis would I respond to your invitation. In doing so I would want an agreement that the hearing be open to the press and public and that, after you had examined me as freely as you may care to, I would be extended the reciprocal courtesy of examining you, your associate commis-

sioners, and such members of your staff as I might deem advisable. Further, that I, being merely a lawyer, might introduce and examine such experts as I thought advisable. Also, that the hearing would be legally constituted so as to enable your commission to compel attendance, by subpoena, for examination by me, of such officials and representatives of the interested power companies as I may request. I would want to examine them, touching their accounting systems, capital structures, rate schedules, "write-ups," and the proposed "write-offs" of about $60,000,000 referred to in the *Herald Tribune* article, hereinafter referred to, and as to any other inflation or write-ups. I would further want to examine these and other witnesses relative to holding company and other affiliations, as well as their financial and banking connections, whether corporate or otherwise.

CHAIRMAN McNinch went on to point out as "legal proof" the fact that a $7,000,000 electric rate reduction was made in New York city about a month after McNinch's original statement. He did not explain just why this would be "legal proof" of the contention that previous rates had been too high. The reasonableness of a utility rate is, in legal theory, a relative quality and commission regulation is continuous in its supervision. Today's unreasonable rate might have been reasonable enough yesterday, and so forth.

In any event, Chairman McNinch went on to discuss in greater detail statistics on electric rates and consumption in New York compared with other sections as shown in the Federal Power Commission studies and ended on a rather conciliatory note:

> May I, in closing, renew my expressions, from time to time, to you and to others, throughout the twenty years I have had the privilege of knowing you, of my great respect for your ability in the utility regulatory field and my complete confidence in your integrity and purpose to serve the public interests. The present incident shall in no wise modify my high esteem of you. I only regret that you did not see fit to handle this matter through the usual channels of correspondence or of informal conference but, since you gave your telegram to the press, I am left no choice but to follow the procedure employed by you.

THE last chapter, at this writing, was the reply of Chairman Maltbie to Chairman McNinch. With the approval of his fellow commissioners, Chairman Maltbie wrote:

> We are pleased to note that you believe you have legal proof to support the allegation that electric rates in New York city are excessive and should be reduced. However, you attach certain conditions to your acceptance of our invitation, which we have carefully considered. Your conditions are:
>
> 1. That the hearing at which you will present legal proof shall "be open to the press and the public."
>
> 2. That the hearing shall be "legally constituted."
>
> 3. That you shall be permitted to introduce and examine such experts as you may wish to present.
>
> 4. That you shall have subpoenas for the "officials and representatives of the interested power companies as I (you) may request."
>
> 5. That you shall have the opportunity to examine each of the members of the commission and any member of our staff.

The first condition, Chairman Maltbie said, is the general practice of the commission. The second and third were also granted. In connection with the fourth, Maltbie said it has seldom been necessary to issue subpoenas, but if necessary in this case, they would be issued if McNinch's requests "seem reasonable and proper." Chairman Maltbie continued:

> The fifth condition is without precedent and indicates a misconception of the telegram which we sent you and the conditions which brought it about . . .
>
> Any information which you might obtain by examining the members of the commission obviously could not have been known to you at the time you made the original statement. As the commission already has whatever knowledge each commissioner possesses regarding electric rates in New York city and as the commission will have at its command the results of all of its investigations now being made by our engineers and accountants, this request is entirely beside the point. What the commission clearly desires is the legal proof which you had or which was at your command.

Chairman Maltbie also pointed out that it would be "farcical" to examine the commission members, who one moment would be sitting in a *quasi* judicial capacity, and the next moment would be witnesses before themselves. He added:

Such a procedure would result in a situation where witnesses would pass upon the relevancy, competency, and credibility of their own testimony. The commission cannot agree to reverse the procedure which it has always followed and adopt the strange and novel course which you ask to be agreed to before you will appear.

SUMMING up this exchange of correspondence, it would appear that Chairman McNinch's original statement was not, in spirit, such a criticism of New York commission regulation as it might seem when isolated from the context. However, in reply to Chairman Maltbie's demand for legal proof, Chairman McNinch quotes comparative rate statistics and tacitly admits he does not presently have such proof by suggesting that both commissions collaborate in a joint fishing expedition to obtain it. Probably nothing more substantial will come of this except, perhaps, an additional exchange of open communications; but it makes one wonder whether, in view of the increasing regulatory powers of the Federal commissions, such incidents promote coöperation with the state commissions.

—E. S. B.

HEARINGS before Subcommittee of the Committee on Appropriations. House of Representatives. Independent Offices Appropriation Bill for 1938. December 10, 1936.

EXCHANGE of correspondence between Milo R. Maltbie and Frank R. McNinch. Released for newspapers February 13, 1937. Federal Power Commission Release No. 171.

OPEN REPLY of Milo R. Maltbie to Frank R. McNinch. *New York Herald Tribune*. February 18, 1937.

Notes on Recent Publications

PUBLIC UTILITIES—PUBLIC SERVICE COMMISSIONS—POWER TO REQUIRE EXTENSIONS—DEDICATION OF PROPERTY BY PUBLIC UTILITIES. By James W. Dorsey. *15 N. C. L. Rev. 70*. December, 1936.

PUBLIC UTILITY VALUATION IN THE SUPREME COURT. By William Pettit. *14 Tenn. L. L. Rev. 356*. December, 1936.

UTILITIES COMMISSIONS AS EXPERT COURTS. By Frank W. Hanft. *15 N. C. L. Rev. 12*. December, 1936.

WASHINGTON NOTES. By T. R. B. *The New Republic*. February 3, 1937.

Discussion of TVA power pool matter from the public ownership viewpoint.

TRIAL BY COMMISSION. By Herbert Corey. *Nation's Business*. February, 1937.

An article indicating that independent commissions of the Federal government act as prosecutor, judge, jury, and marshal in the administration of important governmental regulation affecting business.

ARCH DAM OF ICE STOPS SLIDE. By Grant Gordon. *Engineering News-Record*. February 11, 1937.

Interesting discussion by a U. S. Bureau of Reclamation engineer of the earth freezing methods used at the Grand Coulee dam to prevent soft earth slides during construction.

REPORT OF INVESTIGATION AND ANALYSIS OF OHIO PUBLIC UTILITIES COMMISSION. Ohio Government Survey. December 31, 1936. Columbus, Ohio.

A report on procedural difficulties experienced by the Ohio Public Utilities Commission with specific recommendations for statutory and procedural reform. Prepared by Howell Wright, former director, Cleveland municipal plant.

A GLANCE AT THE RATE SITUATION. By Alfred I. Phillips. *American Gas Association Monthly*. February, 1937.

ELECTRIC POWER FOR FARMERS. Edited by David Cushman Coyle. 170 pages.

Farmers and the electric companies which service them may be interested in the 170-page pocket-size book issued by the Rural Electrification Administration, edited by David Cushman Coyle. It contains an historical account of electricity and the efforts to bring it to the farm, together with statistical tables and charts showing the progress effected throughout the world in farm electrification. Chapters are devoted to cost of service and electric rates, together with a description of the methods used by the REA to aid farm coöperatives and other organizations. Obviously, the booklet is intended to publicate REA activities, but nevertheless it should prove of value to utility executives.

The March of Events

Order Enjoins Utilities

IN line with his own opinion handed down last January, Federal Judge Mack entered a decree on March 8th permanently enjoining the Electric Bond and Share Company and twelve of its affiliates from violating provisions of the Public Utility Holding Company Act.

The companies were enjoined from engaging in the transportation, transmission, or disposition of natural or manufactured gas or electric energy in interstate commerce, or using the mails or any means of interstate commerce in connection with service, sales, or construction work, until and unless they register with the Securities and Exchange Commission, or cease to be holding companies. The injunction would become operative "thirty days after the date of the decree," which was signed on March 6th.

Judge Mack granted the decree without "prejudice to the rights and remedies at law or in equity which the defendants may have after registering as holding companies." He also provided that "it shall be without prejudice to the right of any defendant to question the validity of any provision of the said act other than Section 4 (a) and 5 thereof." It is in these sections that holding companies are required to register with the SEC.

The decree provided that if the defendants took an appeal and perfected it within legal time limits, the injunction would be stayed "as to appealing defendants."

Utilities Assailed in Both Houses

AUTHORIZATION for the Federal Trade Commission to investigate the alleged activities of public utilities in seeking to influence public opinion against municipal or public ownership of power plants was sought in resolutions offered on March 4th in both houses of Congress.

The Senate author was Senator Norris of Nebraska, while in the House, Representative Rankin, Mississippi Democrat living in the area served by the Tennessee Valley Authority, sponsored the resolution.

Shortly after the resolutions were offered, Philip H. Gadsden, chairman of the committee of utility executives, issued a statement saying that the power industry "welcomes any opportunity to bring before the public the real issues involved in municipal ownership and political management of an industry that affects the pocketbook of every voter and citizen." He said the scope of the Norris-Rankin resolution "is limited to the methods of privately owned industry in presenting the public ownership issue to the public."

Mr. Rankin declared the utilities were conducting a "well defined" campaign of "interfering with and attempting to defeat the efforts of every municipality which attempts to acquire or construct its own electric generating or distributing system."

Appeal Set for Hearing

THE Sixth U. S. Circuit Court of Appeals last month set April 16th for hearing on the TVA injunction suit originating in the court of Federal Judge John J. Gore. The date was set on motion of the TVA to advance the time of hearing on an appeal from a decision of Judge Gore, handed down December 22nd.

Judge Gore granted a temporary injunction to 19 private power companies against the Tennessee Valley Authority, restraining it from further expansion of its facilities other than completion of transmission lines already under construction, and from entering into additional consumer contracts.

Forced to Match Rates

A "CRACK down" policy adopted by the Rural Electrification Administration has resulted in two power companies making concessions to meet rates offered by rural electric coöperatives in Wisconsin and North Carolina, the REA revealed last month.

The agreements reached between the coöperatives and the power companies enabled REA Administrator John M. Carmody to rescind a $123,000 allotment for a coöperative in Franklin county, North Carolina, where the Carolina Power and Light Company agreed to "give services under terms similar to those offered by the coöperative." As a result, the Carolina Company will build 123 miles of rural line to serve 550 farms. The Carolina Power and Light Company is a subsidiary of the Electric Bond and Share Company.

Carmody also announced that the Rock County Electric Coöperative of Jamesville, Wis., had reached an agreement with local power companies for power at "reasonable wholesale rates." Carmody rescinded a $40,000 allotment to the coöperative for building a generating plant. The coöperative is building more than 400 miles of rural distributing lines for which the Federal Rural Electrifica-

tion Administration made a $43,000 allotment.

REA only a short time ago adopted the policy of making loans to coöperatives for generating plants after former Administrator Morris L. Cooke had declared the wholesale rates offered by utility companies were too high. REA officials have stated that one cent per kilowatt hour is regarded by the administration as "reasonable" wholesale rate for coöperatives, it was said.

Alabama

Gets Rural Funds

THE Rural Electrification Administration at Washington on March 10th allotted $200,000 to the Baldwin County Electric Membership Corporation of Bay Minette. REA officials said the allotment provided for 211 miles of rural line to serve nearly 700 customers in Baldwin and Monroe counties.

They said the Fairhope municipal plant probably would supply the power.

Approves Plant Sale

THE state public service commission on March 12th approved the sale of the Alabama Power Company's distribution plant at Tuscumbia to that city for $106,500.

Arizona

Oppose Power Offer

AN offer to Arizona of 118,000 horsepower of electrical energy at cost of production at Boulder dam may go begging as a result of opposition to terms of the gift, it was foreseen last month. While 5,000 Arizonans reportedly have enrolled in a drive to bring the power to central and southern state markets, others have denounced the plan as impractical, and have urged that the state reject the offer.

Revival of the long-smouldering dispute with sister states of the Colorado river basin, and with the U. S. Department of Reclamation, was reported to be behind much of the opposition to the power plans. Additionally, the Salt River Valley Water Users, largest producers of power in the state, declared that markets did not justify construction of the long transmission lines from the dam. Their opposition was reported to be based apparently on fear that power markets would be demoralized, and central Arizona irrigation projects' financial stability endangered.

Two bills in the state legislature to authorize Boulder dam power surveys brought the fight into the open. Both measures were shunted into committees believed hostile. Opposition of Governor R. C. Stanford to "any Boulder dam power plan tied to the compact" seemed further to lessen the chance of Arizona's accepting the Boulder dam power.

The power could be obtained only through contracts with the Secretary of Interior, it was said, whose authority is based upon the Boulder canyon project act, which in turn provides Arizona must accept the Santa Fe compact water division before it can get benefits under the dam.

Arkansas

Plan Deposit Refund

ABOUT thirty representatives of Arkansas utility firms attended a conference early last month at the offices of the state utilities commission to discuss a proposal that utility firms permit customers with two years' satisfactory credit rating to withdraw service deposits.

Under the plan suggested by the commission, credit cards would be issued to customers with satisfactory credit rating which would entitle them to service from other companies in the state without putting up a deposit if they should move to another community. Most of the utility representatives expressed opposition to the plan, it was said, on the ground that the credit system would leave the utilities without protection in many cases where a customer might experience financial reverses after having maintained a good rating several years.

Thomas Fitzhugh, chairman of the state commission, said after the conference that the question would be given further study and that additional conferences would be held before definite action would be taken on the proposal.

Representatives of electric companies and commission members also discussed at the conference a proposal to extend rural lines on an area basis, which would require a company entering a rural territory to provide facilities to serve the less remunerative sections of the area, as well as the more desirable sections. The group discussed the possibility of establishing a basic guaranteed return per mile of rural lines built, but no definite agreement was reached as to how the proposal could be put into operation. The commission indicated that the matter would be given consideration.

Opposes Utility Bill

A WARNING that S. B. 327 (to amend the general corporation act of Arkansas) "contains language which would place nonprofit corporations formed to engage in rural electrification and the farmers of Arkansas under the complete domination of existing utilities," was received by Governor Bailey last month from John M. Carmody of Washington, Rural Electrification Administrator.

In a long telegram to the governor, Mr. Carmody said "passage of Senate Bill 327 will defeat the purpose of rural electrification in Arkansas." The bill was recently passed by the Senate and the emergency clause was adopted.

In addition to protesting against the bill, and arguing that its enactment would "strike a vital blow to rural electrification development in Arkansas," Mr. Carmody said that an amendment to S. B. 342—the electric coöperative corporation act, sponsored by the REA—which would require coöperatives formed under the act to obtain permits from the state department of public utilities also was objectionable to his administration. The amendment was adopted March 1st by the Senate. Mr. Carmody urged the governor to "use your good offices" to secure passage of H. B. 463, which was said to be identical to S. B. 342, without the amendment. House bill No. 463 passed the Senate, 27 to 1, on March 10th.

Thomas Fitzhugh, chairman of the state utilities commission, said that the proposed electric coöperative corporation act, as embodied in S. B. No. 342 and H. B. No. 463 (identical bills), was drawn up by attorneys of the Rural Electrification Administration, and was introduced with the endorsement of the state utilities commission.

Announces Allotment

THE Federal Rural Electrification Administration on March 9th announced that $120,000 had been allotted for construction of a power plant and lines in Mississippi county.

The project will serve 542 farm homes, the majority of them in the Dyess Colony, established by the Resettlement Administration. Estimates included $50,000 for construction of 43 miles of rural lines, and $70,000 for a generating plant.

California

Urges Public Ownership

PUBLIC ownership of water and power utilities was praised last month in a report of the special Senate Committee on Public Utilities. The report recommended state development of water and electrical energy resources and the issuance of revenue bonds to be used for financing the purchase of privately owned utilities.

Committee members recommended against any plan, however, looking toward complete centralization of existing water and electric energy facilities where such a policy would interfere with existing publicly owned utilities.

The report was signed by Senators Seawell, Garrison, and Jespersen.

Votes Down Power Plan

MONEY ($10,000) to finance an interim committee's investigation of the political activities and rate structures of privately owned utility companies was refused on March 5th by the Assembly Public Utilities Committee. It turned down the resolution without a record vote.

The resolution, introduced by Assemblyman Ellis E. Patterson, was designed to authorize an investigation which would obtain data to be used as basis for 1939 legislation aimed at state acquisition of all privately owned power generating and distributing facilities.

Speaking against the measure, Thomas M. Carlson, attorney for the California State Water Authority, which has jurisdiction over plans for the Central valley water project, said he feared the resolution, if adopted, would make the Pacific Gas and Electric Company antagonistic to the water project. Carlson said that, after many years, coöperation had been obtained with the large power companies and that the companies are now coöperating with the authority. The authority, he said, did not want to put any obstacles in the way of completion of its project.

Patterson insisted that private power companies still were "trying to defeat the completion of the Central valley project." Assemblyman Ralph L. Welsh of Los Angeles made the motion to table the resolution.

Rejects Municipal Plan

SAN Francisco voters on March 9th rejected, by 77,614 to 65,688, a municipal ownership plan for purchasing electric distribution facilities of the Pacific Gas & Electric Company through issuing $50,000,000 in revenue bonds. Less than 50 per cent of those eligible voted, it was reported.

Secretary Ickes has intimated that he will refer the matter to the Attorney General for court action.

Eight U. S. Senators had signed a petition commanding the people of San Francisco to vote the bond issue. They were: Norris of Nebraska, La Follette of Wisconsin, Nye and Frazier of North Dakota, Lundeen of Minnesota, Bone and Schwellenbach of Washington, and Minton of Minnesota.

Gas Rates Cut

A SAVING of $1,000,000 annually to gas consumers of southern California was effected early last month when the state railroad commission announced a 15 per cent reduction in gas rates to all users of products supplied by the Southern California Gas Company and the Los Angeles Gas and Electric Corporation.

The saving in Los Angeles alone would exceed $500,000 a year, according to Wallace L. Ware, president of the state commission, who announced that the new basic rate would be effective April 1st. The reduction was recommended after the commission's engineers and accountants had made an informal investigation over a period of five months into earnings and operating costs of the two companies. This new reduction in gas costs, combined with the saving resulting from a reduction less than a year ago, represented a total saving of $2,300,000 yearly to southern California gas consumers.

Merger of the Los Angeles Gas and Electric Corporation and the Southern California Gas Company was anticipated, with possible further savings predicted for the near future. Both companies are subsidiaries of the Pacific Lighting Corporation.

Approves Power Study

THE State Water Project Authority on March 4th authorized a study to assure the use of Kennett power facilities for additional electric demands in northern and central California.

State Engineer Edward Hyatt was instructed to conduct the study, in coöperation with representatives of the Pacific Gas and Electric Company, as a result of the company's offer to take for delivery the power output of Kennett dam when that portion of the Central valley water project is completed.

Accepts Post Again

MONTE Williams early last month was prevailed upon by the city council to resume his post as mayor of Tulare, succeeding Dr. Edgar L. Smith, acting mayor, who resigned. Smith was appointed mayor on February 26th, after Williams' spectacular resignation as an aftermath to the city election when voters repudiated the city council's plan to acquire the electric system for municipal operation.

Florida

Parleys Wait Appeal Move

CONFERENCES looking toward settlement of controversies between the city of Miami and the Florida Power and Light Company were postponed recently until about May 1st, when the company will have perfected its appeal in the electric rate litigation, as the result of a letter from President Bryan C. Hanks of the power company accepting the city's offer to confer.

President Hanks made it clear the company would be glad to discuss all controversial issues, except the electric rate suit, in which the city recently won a Federal court decree. When he first broached the proposition for conference table discussions, Hanks said his concern was willing to "take a licking" if the city would agree to a postponement of signing of the final decree in the rate litigation. It was considered unlikely now, however, that Hanks would be willing to consent to agreement and amicable settlement of certain controversial issues, particularly those involving extension of service in either electric, gas, or water.

One of the principal questions on which the city and gas company, subsidiary of the power company, are at odds is the matter of gas rates.

Approves Franchise Delay

BY unanimous vote, Miami city commission on March 15th deferred until after the election in May placing before the people a proposal of the Miami Transit Company, seeking a 20-year franchise for operation of a unified public transportation system.

Commissioner R. R. Williams, who had brought in a proposed ordinance for granting of the franchise to the Miami Transit Company, insisted it was the duty of the commission to provide adequate transportation at a reasonable cost.

Illinois

Gas Heating Rates Cut

THE North Shore Gas Company, serving 37 suburban communities, including a large portion of the Chicago north shore, last month announced reductions in gas rates for water heating and house heating uses. William A. Baehr, president of the company, said the reduction would affect the average householder whose monthly bills range from approximately $8.59 to $58.84 on water and house heating. The reductions do not affect gas for cooking purposes.

Under the new classification, rates for water heating were reduced about 8 per cent, while gas rates for house heating were reduced approximately 14 per cent.

Would Amend Utility Act

A BILL introduced in the state legislature last month by Representative Petlak would provide that moneys deposited with, or collected by, public utilities for the purpose of guaranteeing payment for metered or measured service shall be set aside and used only for payment of bills improperly refused to be paid by the consumer.

The bill further provides that such moneys shall be available for immediate distribution in case of financial difficulties of the utility. No utility shall use moneys for the purpose of coercing payment of disputed bills. All such moneys remaining unclaimed for five or more years after the amount has been settled or after service to the depositor has been discontinued may be claimed by the state in an action against the utility and despositors and if awarded to the state shall be used for paying old age assistance claims. The bill was referred to the Public Utilities Committee.

A subsequent bill introduced by Representative Petlak provided that no public utility furnishing gas, electric light, electric power, or telephone service shall impose upon its customers a ready to serve charge, meter charge, or meter rental charge, or any other charge except the charge imposed at its legal schedule of rates for service and commodity, and those charges commonly called customers' costs, or charges, including meter reading, meter inspection, billing, and bookkeeping shall be divided among all customers receiving said service.

The bill would make it the duty of all utilities to supply all instruments, equipment, and devices of whatsoever kind and character necessary and incidental to the ascertainment and measurement of the commodity furnished, and without charge or expense to its customers, except as such expense may be reflected in its legal and fixed schedule of rates for the commodity actually furnished. The bill was referred to the utilities committee.

Indiana

Rebate Bill Advances

HOUSE Bill 269, an amendment to the state public service act, passed the House 67 to 8, and was reported to have reached second reading early last month in the Senate. It amends the utility law in such a manner as to make lowered utility rates effective from the date the complaint was filed rather than the date of the new schedules.

Louisiana

Phone Reduction Held Valid

THE statewide telephone rate reduction order which was placed in effect by the state public service commission two years ago, and which was estimated to save subscribers $750,000 annually, was held valid by the state supreme court on March 1st.

The opinion, which reversed District Judge W. Carruth Jones of Baton Rouge and directed that the order be made effective as of March 2, 1935, was written by Associate Justice Fred M. Odom. The case previously had been before the tribunal three times on technicalities and injunction petitions involving procedure.

The court asserted that a discrepancy of almost $15,000,000 between sworn valuation of the Southern Bell Telephone and Telegraph Company's property in the state, which was placed at $19,207,210 for taxation purposes, and the valuation made by its experts for rate-making purposes was too glaring to be overlooked. The court declared that it did not find that the commission "used unauthorized or unfair methods in arriving at the present fair value of the company's property or that it refused or failed to consider the testimony offered by it."

Maine

Fight Municipal Ownership Bill

PUBLIC utility corporations last month opposed before a legislative committee a bill permitting counties and municipalities of the state to acquire, own, and operate public utilities. Senator Edward J. Corrigan of Calais, sponsor of the bill, and Representative Roger G. Leonard of Hampden spoke for it. Opposing the bill were Edward F. Merrill, for the Central Maine Power Company and the Cumberland County Power and Light Company; Henry Hart, for the Bangor and Aroostook Railroad, and William S. Linnell, for the Portland Gas Light Company.

Senator Corrigan said the people "are demanding cheap electricity," and that experience with private and government-owned plants "is that public plants sell electricity cheaper than private plants." Representative Leonard charged that "rights and resources of the people have been given over to private companies and have been wrongfully used." He contended opposition of public utility companies to public ownership bills was an "admission of guilt." The constitutionality of the bill was questioned by the opposition and some members of the committee.

Mr. Merrill said he questioned if there had been a public demand for the type of legislation the bill would provide. He said all utilities are trying to lower rates.

Massachusetts

Negotiate Rate Cut

AGREEMENT by the Fall River Electric Light Company to an annual voluntary reduction of $115,000 in electric rates, effective April 1st, was announced March 11th, following a 3-hour conference with local legislators and municipal officials. A petition requesting such a cut, filed with the state public utilities commission by residents of Fall River, was dropped as a result of the agreement. The new rates are effective in Somerset, Swansea, Dighton, Westport, and Fall River.

Under the new rate domestic customers of the company will save $80,000 a year, while commercial consumers will receive a cut of $35,000 annually. According to terms of the agreement the new rate for domestic electric service calls for a charge of 6½ cents per kilowatt hour for the first 15 kilowatt hours of electricity delivered each month, and a charge of 6 cents per kilowatt hour for the next 15 kilowatt hours. Charges above the 30 kilowatt hour mark remained the same as in the old schedule: 5 cents per kilowatt hour for the next 50 kilowatts; 3 cents per kilowatt hour for the next 100, and 2½ cents for all in excess. The $9 minimum rate still applies, it was said.

Votes Rate Bill

BY a vote of 119 to 102, the House on March 2nd substituted a bill of Representative Edward T. Brady of Somerville to provide that in all rate cases the burden of proof would be upon the gas and electric light companies. The measure was defeated in the House on March 1st, but the Somerville Representative secured reconsideration and then got a majority in favor of his bill. Brady argued that the companies should be required to prove that their rates are just, instead of requiring the consumers to prove that they are not.

He referred to the situation in his own city, where the consumers pay the Edison Company 6½ cents per kilowatt hour, buying directly from the company, while in Cambridge, where electricity is bought by another company from the Edison and then sold to the consumers, the rate is 5 cents per kilowatt hour.

Michigan

Asks Natural Gas

DETROIT officials will actively coöperate with the Michigan division of the Cities Alliance to obtain an adequate supply of natural gas for the Detroit and Pontiac districts and bring about reduced gas rates for all the communities affected, it was agreed at a city council hearing last month. The joint effort will include an investigation into charges that Michigan's natural gas development is being throttled by "a few dominant utility interests."

A meeting of the Michigan division of the alliance, comprising 28 communities in the Pontiac district, was scheduled to be held March 31st at Lansing to urge the state to investigate these charges. Council President

John W. Smith and other Detroit officials were to attend.

The coöperative plan, which was laid before the city council by W. P. Edmonson, city manager of Pontiac and chairman of the Michigan division of the alliance, contemplates connecting the Pontiac district with the natural gas system now serving the Detroit area. Cities in the Pontiac district, including Birmingham, Royal Oak, Mt. Clemens, Plymouth, and Ferndale, now have only manufactured gas service and are paying much higher rates than Detroit, Edmonson told the council. Rates in Flint and Pontiac are 85 per cent higher than Detroit's promotional rates, while Ypsilanti's rates are 116 per cent higher, he said. These excessive rates, he stated, are placing a handicap on industrial development.

Detroit was recently asked to contribute $2,000 toward a $15,000 fund being raised by the Cities Alliance for the campaign to bring additional natural gas from Texas to Midwestern cities.

Reports Power Bills

THE House Public Utilities Committee on March 3rd reported two bills providing for formation of metropolitan power and light districts, and financing of power plant construction. Representative M. O. Clines (D.) of Ludington, committee chairman and sponsor of the bills, said Mason county hoped to form a district to erect a power plant on the Pere Marquette river to serve local communities.

The bills would amend the 1929 act providing for formation of districts to construct sewage disposal systems and install water systems in contiguous communities.

Minnesota

Natural Gas Tax Assailed

OPPONENTS of Representative White's bill imposing a 2-cent tax per one thousand cubic feet of natural gas, at a public hearing held last month by the House Tax Committee, said that home owners and small consumers would be affected by the proposed tax.

Another bill introduced by Representative Eastvold would tax gas companies on a gross earnings basis. Eastvold said he favored a tax on natural gas but merely wanted to arrive at the most effective method of imposing the tax.

Representative White, author of the bill imposing the 2-cent tax, said that "at present there is no regulation over natural gas. Rates in one place vary from those in another. This bill also would place regulation of natural gas under the railroad and warehouse commission."

B. E. Hughes, member of the Austin water and light board, opposing the measure, stated that fewer than one-third of the users of natural gas in Minnesota would be affected by the tax because the large users receive it direct from its out-of-state sources. He said they would be exempt because the gas flowing directly to them is in interstate commerce, not taxable by the states.

Montana

Agrees to Amendments

THE House last month agreed to Senate amendments to H. B. 159, fixing the rate of taxation on producers of electricity at one per cent of the gross income. The House had asked for 2 per cent. The telephone gross receipts tax will be 1¾ per cent, instead of 2 per cent as asked by the House. The latter measure was signed by the governor on March 12th.

Nebraska

Fight Electric Bills

OMAHA electrical, hardware, and plumbing dealers recently criticized sections of proposed state legislation affecting coöperative rural electrification associations in Nebraska.

A provision of bill 252 would authorize the coöperatives to "assist in the wiring of the premises . . . or the acquisition, supply, or installation of electrical or plumbing appliances or equipment."

It was reported that some Nebraska dealers complained that their busiess already has been impaired because farmers who had intended to improve farms this spring are holding off in the expectation that, if a coöperative association in their neighborhood gets a Federal loan, the job will be done "at wholesale prices."

The dealers also objected to bill 522, giving existing public districts authority "to buy, sell, install, and repair electrical and plumbing appliances."

New Jersey

Endorse Transit Plan

WHILE some objections were raised as the comprehensive rapid transit plan linking communities of northern New Jersey with mid-town Manhattan and Staten Island was brought before the state legislature early last month, all concerned agreed that the plan was a definite step toward much needed transit unity. The legislature took no action on the measure at the time, but it was indicated that it would be referred to a special joint committee of the Senate and Assembly for study.

Few of the members of the legislature were familiar with the details of the plan, as was also the case with the State Planning Board, which received it March 1st. Pending further study, there was no comment from Governor Hoffman.

Mayor Meyer C. Ellenstein of Newark endorsed the proposal whole-heartedly and held that each of its seven points was essential. He was confident that the plan would have the support of the governor and members of the legislature.

New York

Clash over Bill

THE Burchill bill which would give the state public service commission authority to order municipal utility systems to limit rates to cost of service was debated sharply on March 8th at a public hearing before the Senate Public Service Committee.

Spokesmen for several municipalities which operate plants opposed the measure as "vastly unfair." Milo R. Maltbie, chairman of the public service commission, defended the bill, which carries out a recommendation of Governor Lehman. Chairman Maltbie declared that if the municipalities don't think the bill is fair, "it is up to them to make some suggestion as to what a fair rate should be."

Advocates of the bill contended that municipalities with utility systems have been making profits on service which have gone into the general funds to be used for tax reductions.

Paul Shipman Andrews, counsel for the Municipal Electric Utilities Association, made up of 52 municipalities, told the committee that the bill would "kill municipal utilities in New York state." Each municipality, he said, should retain the right to determine what profit should be made. He said the bill would tend to cut down and prevent extension of lines in rural communities of the state.

Mr. Andrews asserted that municipal plants had substantially lower rates than privately owned systems and yet cut taxes by use of profits, adding that 65 per cent of the utility ratepayers were taxpayers.

Urging favorable action, Chairman Maltbie insisted that some municipal systems built up unreasonable surpulses through the rates charged to consumers. Often, he declared, "no one except those on the inside knew what the money that went into the general fund was used for."

Gas Rates Filed

REVISED gas rates, which will save about $630,000 a year for consumers in Manhattan, the Bronx, and part of Queens, were filed with the state public service commission on March 4th by the Consolidated Edison Company of New York. The new rates became effective March 11th. The principal reductions were applicable to gas used for space heating purposes. Similar reductions in rates for this type of service, effective March 13th, were recently established in territory served by the Westchester Lighting Company, a Consolidated subsidiary.

Reductions in the space heating rates were made by unifying Consolidated rates into a single schedule and placing the rates of affiliated companies on the same basis. The revisions constituted the first step in a program designed to spread through the entire year the rates now applicable in June, July, August, and September.

The new Consolidated schedule contains two rates—one for residential and one for nonresidential use. The schedules of the other companies contain a single rate, applicable to both types of use.

Under the new Consolidated schedule the minimum charge of $80 a year was reduced to $64. The rate block providing that after 9,000 cubic feet have been used the next 6,000 cubic feet would be charged for at 6 cents a hundred cubic feet was eliminated. After March 11th, all gas used in excess of 9,000 cubic feet will cost 5 cents a hundred cubic feet.

Oppose Appliance Bill

A PUBLIC hearing before the Assembly Public Service Committee on the Turshen bill, which would bar the manufacture or sale of household appliances by gas and electric companies, was held on March 10th at Albany.

Colonel Charles Blakeslee, former counsel for the state public service commission, represented the Long Island Lighting Company and other utilities in opposing the measure. He contended that the utility companies gave the public a wider selection of household appliances on better terms than could be obtained otherwise.

George A. Hughes, an appliance manufacturer, maintained that the promotion of appliances by the utility companies aided the consumer and also the independent dealer.

State Plans Suit

THE constitutionality of legislative acts which provide for the diversion of water of the Niagara river by the Niagara Falls Power Company is to be tested in the courts, following a formal notice from the state Water Power and Control Commission to the power company to "desist from taking, diverting, drawing, or making use of for power or other commercial or manufacturing purposes 15,100 cubic feet per second of Niagara River Water."

This action was taken, Lithgow Osborne, chairman of the commission, said in a prepared statement, so that the courts finally could determine the constitutionality of the power company's taking the water without compensation to the state and also determine the rights of both the company and the state.

Mr. Osborne said the statement by Colonel Kelly, vice president of the Niagara Falls Power Company, that the commission's action would close plants and cause unemployment, "is quite fantastic." He said at most the power company would be required to pay the state some "equitable rental" for the water it uses. The Niagara Falls Power Company now diverts 20,000 cubic feet a second of Niagara river water for generating electric current, and pays the state through the Water Power and Control Commission a rental only for 4,900 cubic feet per second, claiming that under legislative acts it has the right to divert 15,100 cubic feet.

North Carolina

House Passes "Ickes" Bills

THE seven so-called "Ickes bills" introduced by Finance Chairman Victor Bryant were all passed by the House recently, but not until a long fight was waged on a committee amendment which would require municipalities extending their lines into territory outside of their limits already "adequately" served to secure from the state utilities commission a certificate of convenience and necessity.

After the committee amendment had been adopted in a perfunctory session, Representative Brooks took the floor and intimated the provision had been placed in the bill at the instigation of various power companies. "This is an attempt to revive," he said, a bill requiring power companies, rural coöperatives, and municipalities to secure a certificate of convenience and necessity "which has been threshed out by the utilities committee and put to sleep."

Representative Pickens sent forward an amendment striking out all of the committee amendments and making the measure "acceptable to PWA authorities." He said with these amendments building with PWA funds would be seriously impaired.

The committee amendments were killed by a voice vote and then the bill was passed by the House on second reading by a vote of 68 to 1.

Ohio

Delay in Case Refused

THE United States Supreme Court on March 1st refused to delay arguments in the Ohio Bell Telephone Company refund case, set for hearing April 5th. Attorney General Herbert S. Duffy of Ohio had asked for a continuance until the latter part of April on the ground that more time was needed to prepare the state's arguments. After a conference with Chief Justice Hughes, Duffy said the court considered that the public interest demanded speedy disposition of the case.

Company Rejects Rate

AN ordinance adopted by the Nelsonville city council, continuing the present gas rates for the next four years, was rejected last month by the Ohio Fuel Gas Company, which is seeking an increase.

The company submitted a "compromise rate," with the warning that if it was not accepted the case would be taken to the state public utilities commission, where the company said a higher rate would be established, it was reported.

Asks Alteration in Law

COLUMBUS councilmen agreed last month to memorialize the state legislature to amend the state utilities law, so as to give local communities and courts exclusive jurisdiction in gas rate cases.

Request that this be done came from the Assembly of Northern Ohio communities, which adopted a resolution to this effect at a recent meeting in Akron.

REA Loan Granted

THE Rural Electrification Administration on March 3rd announced a loan of $378,200 to the Intercounty Rural Electric Coöperative, Inc., of Hillsboro, Ohio, for construction of 310 miles of lines to serve customers in Highland, Clinton, Ross, Fayette, and Adams counties.

Pennsylvania

Passes Municipal Ownership Bills

Two measures permitting municipal ownership and operation of a trolley system in greater Pittsburgh on March 11th received approval of the state House. By a vote of 190 to 15, the House approved the bill of Assemblyman Adam Gorski, (D.) of Erie, permitting any city, except Philadelphia, to construct or acquire waterworks, subways, underground or street railways.

On the same day the House approved, 148 to 46, the Rothenberger bill permitting any local subdivision to "acquire, construct, reconstruct, improve, better, and extend" various revenue-producing projects, including "transit facilities."

Both the Gorski and Rothenberger bills authorize municipalities to operate railways both within and without their territorial boundaries. The Gorski bill, however, does not permit bus line operations. Both permit competitive operations, which would empower establishment of a duplicating transportation system in Pittsburgh paralleling the Pittsburgh Railways Company, with which the city is attempting to negotiate a new agreement involving financial reorganization to wipe out its underliers.

The Gorski bill lodges all jurisdiction for management and control, including the fixing of rates, with the city by specifically exempting the state public service commission from all jurisdiction over the system.

Ripper Bill Still Pending

GOVERNOR Earle's bill to supplant the present public service commission of Pennsylvania with a new commission of his own choosing having passed the House was snagged in the state Senate by the effective time limit—March 15th—incorporated in the original text of the bill.

The bill came on for hearing, however, under an amended effective date in the state Senate, March 17th, and it was expected that following hearings in which the present public service commission of Pennsylvania would participate, the bill would be reported favorably.

Would Limit Salaries

A BILL based on the belief that if the state can regulate the financial return of a public utility it can fix the maximum salary of executive officers of utilities made its appearance in the House on March 3rd. It was presented by Representatives J. E. McElroy and F. J. Falkenstein, of Philadelphia.

It would fix the maximum salary of an executive at $18,000, the salary paid Governor Earle, and would make it unlawful for any utility to pay an executive more than that sum after next January 1st.

The bill also would prohibit utilities making any expenditures for advertising that is untrue. The penalty for violation would be sixty days to one year in prison, and no fine could be imposed in lieu of the sentence.

South Carolina

Approves Grant

SECRETARY Ickes approved a $150,000 requisition by Greenwood county for preliminary work on its $2,500,000 public power project at Buzzards Roost, held up for more than two years by litigation instituted by the Duke Power Company. PWA officials said recent modification of an injunction permitted the grant.

They said that in the event of final court ruling against the project, the $150,000 will

stand only as a claim against the county. If the project goes through the money will be included in the total allotment.

The PWA granted Greenwood county $20,000 before courts blocked the project. The county proposed to build a power plant on the Saluda river. State courts have upheld constitutionality of enabling legislation. The Duke Power Company went into Federal courts, challenging validity of PWA activities. The Supreme Court refused to pass on the case, holding it had not been properly handled in lower courts. The litigation now is pending in the Federal district court.

West Virginia

Announces Phone Rate Reduction

THE state public service commission on March 5th announced that the Chesapeake and Potomac Telephone Company of West Virginia had agreed to the commission's requirement that, effective April 1st, it file new tariffs stating rate reductions totaling approximately $233,000 annually.

These tariffs would eliminate the 15-cent monthly charge for handset telephones for all subscribers who have paid the charge for eighteen months, and as rapidly thereafter as a subscriber reaches the end of the 18-month period the charge for such subscriber would cease. Effective January 1, 1938, the charge will automatically be eliminated to all subscribers on that date and those thereafter desiring handset type telephones.

The tariffs also provided for a reduction in the company's intrastate toll rates and several miscellaneous charges. The reductions effective April 1st, together with reductions that have been ordered since the commission initiated its investigation now in progress of the rates, tolls, and charges of the telephone company in the fall of 1935, result in a saving to the users of the company's service in this state of $368,000 a year. This saving is applicable to the company's West Virginia business only and does not include toll rate reductions made to points outside the state.

Wisconsin

OK Utility Measures

BY a vote of 56 to 35, the state Assembly on March 10th engrossed a bill permitting municipalities to construct public utilities without obtaining from the public service commission a certificate of necessity and convenience.

A motion by Assemblyman Paul Alfonsi to suspend the rules and vote on final passage was objected to by Assemblyman Milton Murray. It failed to receive the required two-thirds vote, the vote being 52 ayes and 40 noes.

Assemblyman Elmer Genzmer, speaking against the bill, said "I am afraid municipalities will set up competing lines with prvate utilities at an expense to the taxpayer without consulting taxpayers." Charging that utilities had flooded Milwaukee in the past with money to defeat measures opposed to their interests, Assemblyman Andrew Biemiller reassured Genzmer "that he doesn't need to worry about referendums. The utilities will take care of themselves."

The Assembly on March 12th passed two bills fathered by H. S. Halvorsen affecting public utilities in Wisconsin. One of the proposals required utilities to bear costs of investigation and appraisal by the state public service commission in connection with acquisition proceedings launched by a municipality.

The other measure provided that orders of the commission affecting utility rates would become retroactive to thirty days after first proceedings had been begun by the public service commission.

Charles B. Perry, a supporter of the proposal, contended the bill would remedy alleged injustices caused by long delays.

La Follette OK's REA Bill

GOVERNOR La Follette on March 9th signed the bill intended to protect rural electrification coöperatives from interference or competition by private utilities, passed by both branches of the legislature by an overwhelming majority. Two opposition amendments were killed, and the measure was passed in the form desired by its sponsors.

The bill forbids private utilities from extending or constructing (for a stated period) lines in territory which a rural power coöperative proposes to electrify. If an incorporated coöperative files with the state public service commission a map of its territory, together with a statement showing that a majority of prospective customers in the area is included in the project, private companies are enjoined from construction for six months. If the coöperative secures a Federal allotment, private competition is prohibited for twelve months.

The Latest Utility Rulings

California Adopts Federal Accounting System with Modifications

THE uniform system of accounts for telephone companies prescribed by the Federal Communications Commission was adopted by the California commission for all telephone companies in the state having annual operating revenues of $50,000 or more. The commission, however, made modifications:

> We think it is desirable that the general scheme of accounts prescribed by us should be the same as that of the Federal Communications Commission. Some telephone companies which are under our jurisdiction operate properties situate wholly in California, while others operate properties situate partly in California and partly in other states. For us to set up balance sheet accounts, plant accounts, income accounts, surplus accounts, revenue accounts and operating expense accounts different in number, title, and text, from those of the Federal Communications Commission would only lead to confusion and perhaps unwarranted expense. But it does not necessarily follow that we subscribe to all the definitions and instructions contained in the proposed system of accounts. We will adopt the said system of accounts subject to the modifications presently stated.

The commission did not think it necessary that a system of accounts prescribe the method that should be used to calculate the allowance for depreciation included in operating expenses. It therefore did not require telephone companies to calculate depreciation on a straight-line basis. The commission was also of the opinion that a telephone company, if it desires to do so, should be permitted to write off discount on stock by charges to its surplus. Moreover, telephone companies were not required to undertake the preparation of a continuing or perpetual detailed record of telephone plant.

To avoid delay in closing books the commission believed that an instruction of the proposed system of accounts should be modified to allow the computation of the monthly depreciation charges to be made on the basis of the balance in the plant accounts as of the first of the current month rather than on an average of the balance on the first and last of the current month in each plant account. *Re Uniform System of Accounts for Telephone Companies (Decision No. 29401, Case No. 4082).*

Missouri Commission Passes on Valuation Questions

THE Missouri commission, in fixing the value of electric utility property, excluded from original cost the expense incurred in selling preferred stock, expense incurred for watchmen's salaries and other incidental charges when work was suspended on construction because of lack of funds, the estimated salvage value of surplus construction equipment and miscellaneous supplies remaining from the construction of a hydro plant, and cost incurred in obtaining a contract for supplying electricity.

The commission was of the opinion that no allowance should be made for the financing expense, although it might be considered in fixing the return. Expenses resulting from inability to obtain funds were declared to be no part of construction cost.

The commission was of the opinion that the company was entitled to have included as part of original cost an appreciable sum for the cost of promotion, organization, and consolidation, but this item, it was said, has the same relation to

original cost that going concern value has to reproduction cost. It represents the cost of bringing the company to its present status. No separate allowance need be made for either this or going value.

An assumption that the company in reproducing the property would find it necessary to use all union labor, or that it would be possible to construct the property with nonunion labor, was disapproved where the companies had in the past constructed parts of the property with union labor and parts with nonunion labor, the construction going on simultaneously.

An employees' club and a hospital, excluded by the commission engineers as recreational facilities for employees of the company, were reinstated by the commission. It was said that the extent of the activities which a utility company may carry on to improve the efficiency and promote the welfare of employees is entirely managerial, although the amounts which the commission will permit a company to charge against operating expenses is within the commission's discretion. Expenditures in this case were not considered unreasonable.

Since the commission in determining fair value gave major consideration to original cost and made no deduction for accrued depreciation, it was of the opinion that the sinking-fund method was the proper one to use in the determination of the annual depreciation requirements.

Expense claims for dues, donations, and memberships were eliminated with the statement that the benefits inuring to the stockholders far outweighed those inuring to the consumers.

An expense claim for public ownership advertising was also eliminated. The commission said there was no proof of any disadvantage to the consumers if the utilities serving these consumers were publicly owned rather than privately owned. The purpose of the advertising was primarily to protect the investors, and, therefore, should be borne by the investors.

Although the commission fixed the value of the property and also fixed depreciation rates, the utility's charges were found to produce an inadequate return, and no specific return allowance was passed upon. Two commissioners, in a dissenting opinion, expressed the opinion that the finding of fair value could be treated and classified only as a nugatory act as there was nothing to warrant the commission in determining the case to make a finding of fair value. *Re Union Electric Light and Power Co. et al. (Case Nos. 5905, 7593).*

Federal Court Sustains Ordinance Rates for Natural Gas

A FEDERAL district court upheld natural gas rates fixed by the city of Texarkana for the Arkansas-Louisiana Gas Company after hearings before the city council and findings of fact by that body. The court said that findings by the council, in the very nature of such cases, have an evidential value in determining whether or not the city council, as triers of fact, acted unreasonably and arbitrarily, although in fixing the standard of their evidential value consideration must be given to their experience or lack of experience as triers of fact in such cases.

A master who had heard the case in the Federal court was criticized by the district judge for setting up a schedule of what he considered reasonable rates to be charged by the distributing company in selling its gas and then invoking a comparison between the results and the city rates to determine whether or not the latter were confiscatory. This method, it was said, means the substitution of the court's judgment for that of the rate-making body, and the court is not to set up a reasonable rate but is to pass upon whether the rate ordained by the city council is so unreasonably low as to amount to confiscation. The court con-

tinued, with the following statement:

> A rate, from a legislative standpoint, may be unreasonably low, and yet be a reasonable rate from a judicial viewpoint. The authorities seem to recognize a marked distinction between a rate which is not confiscatory in its character and a rate which is fair from an economical and commercial sense. Under these authorities a rate of return may be all-sufficient to meet the demands of the Fourteenth Amendment of the Constitution of the United States and at the same time fail to encourage and justify the operation of a utility business with that degree of service to which the public is entitled. The first is a judicial question, while the second is essentially legislative.

The court disallowed as operating expense an item referred to as "employees' subscription plan bonus" where the record was indefinite with respect to the use and benefit of this item. It also held that the master had fallen into the error of reversing the order as to the burden of proof concerning a management fee paid to an affiliated company, where the master had stated that "no particular effort is made to show that the prices charged for this service are exorbitant or that plaintiff does not receive value for this payment." The court was of the opinion that the burden rested heavily upon the utility company to show that the service was of value to the company and not in the nature of extra or additional dividends arising out of the intercorporate relations.

Allowances were made for depletion and depreciation and for the amortization of the cost of developing leases, abandoned leases, producing leases, drilling dry holes, and of geological and scouting activities. Rentals which had been delayed, however, were disallowed by the court as an expense. *Arkansas-Louisiana Gas Co. v. Texarkana et al. 17 F. Supp. 447.*

Decision on Rear Lot Line Extension Is Upheld by Court

THE superior court of Pennsylvania sustained a decision by the Pennsylvania commission relating to the terms upon which an electric utility company should extend service from the rear to a row of houses in the city of Philadelphia. Objections to a right-of-way agreement, required as a condition of extending service, were overruled.

A contention that under the form of right-of-way agreement approved by the commission the utility would have an unlimited right to erect on the customer's premises any and all kinds of poles, wires, transformers, and other appurtenances, without regard for danger to the person or property of the occupants of the dwellings, and subject only to the electric company's judgment, was held to be without merit. The right-of-way agreement approved by the commission contemplated the granting of a right of way for "distribution purposes," and it did not contemplate a right of way for "transmission purposes." The agreement being restricted in its operation to distribution purposes, the utility could not utilize the right of way to carry high voltage wires. Moreover, it was pointed out, this matter would at all times be under the control and regulation of the commission.

Failure of the commission to limit the term of the utility's form of right-of-way agreement to a "reasonable period" was not considered by the court to be a valid objection. The court said:

> It is manifestly impossible for the intervening appellee to adequately serve the public if its right of way for construction of its facilities may suddenly expire after the lapse of a few years. A utility is bound and required to furnish and to continue to furnish, adequate and proper service to the public at all times. There could be no continuity of service if the utility at some time in the future found itself without rights of way over which it could serve the public and in the position of a trespasser on private property, due to the expiration of rights of way previously granted to it. It is within the domain of

the commission to decide whether or not the appellant should be served from the front or from the rear of his premises, and if from the rear, subject to such reasonable conditions as the circumstances require.

The customer insisted that since the houses fronted on a public street, the commission could have ordered installation of underground service to the front of the premises, but the customer would not pay for such underground construction. The court held that to permit the customer to receive such underground service at no cost to him while other patrons, under the rules of the commission, paid for underground construction would be discriminatory. *Kiely v. Public Service Commission of Pennsylvania et al.*

Sale of Stock by Utility to Parent Corporation Is Approved

THE Pennsylvania Gas and Electric Company, which has a large part of its capital funds invested in securities of affiliated companies, was authorized by the Pennsylvania commission to sell to its holding company, the Pennsylvania Gas and Electric Corporation, 13,160 shares of $7 cumulative preferred stock of North Penn Gas Company. The purpose of the sale was to obtain funds to retire bonds of the operating utility, bearing 6 per cent interest, but costing about 7 per cent because of assumption of tax burdens by the utility.

The commission referred to the fact that a considerable part of the utility's investment was in nonadjacent companies which did not serve gas in territory sufficiently close to that of the utility to make practicable their operation as a part of the utility's gas system. One of the companies in which the utility had a major investment was a Virginia public service company. The commission said:

> The commission is of the opinion that the funds obtained by public service companies from the issuance of securities should be used in a manner related to the rendition of public service by the issuers. The application before us is a step in that direction. If the proposed sale were not permitted, petitioner would continue to hold its North Penn Gas Company investment, and would probably continue its present capital set-up by refunding the debentures, when they mature in 1940, through the issuance of new securities. On the other hand, by obtaining our consent, petitioner will be enabled to reduce both its "unrelated" investments and its own securities outstanding against them.

Re Pennsylvania Gas and Electric Co. (Application Docket No. 35151).

Company Extension Not Allowed in Coöperative Territory

WHEN the rendering of public utility service by an electric company to a group of persons in rural territory may interfere with or delay another and larger group from getting service from a coöperative association, even though the association is not a public utility, the Wisconsin commission declares that it must deny authority for the construction of facilities beyond probable future requirements, which may result in increased cost of service without a commensurate in the value or quantity of the additional service provided. On such grounds the commission reaffirmed an order denying authority to construct a rural extension over the objections of members of a coöperative association.

The company could not make the extension within the limits of its own standard extension rules, which permit an investment of $400 per customer per mile of line without customer contributions. No evidence was presented by the com-

pany that any potential customer had agreed or stood willing to contribute to the cost of the line so that an investment of more than $400 might be made under the company's rules. Counsel for the company asserted that the use made by the commission of the company's rule of $400 investment per customer was unwarranted; that the statute did not authorize the commission to prevent rural extensions because of the existence of this rule. The commission replied:

> We can only state that, in the absence of testimony that customer contributions can be secured, the commission must use the $400 provision in cases involving Wisconsin Power and Light Company extensions as a convenient rule of thumb for determination under § 196.49 of the question whether excess facilities may result from construction for which authority is sought.

In answer to a contention that persons seeking company service were entitled to receive it, the commission said that these persons are entitled to public utility service only under circumstances and conditions that will protect company investors and other customers, present or future, from having to defray part of the cost of serving them. This was said to be the intention of the statutes and also the purpose of the company's extension rules.

The commission also held that it had ample authority to consider the presence of electric facilities, planned or actual, other than those of a public utility in authorizing or denying a public utility extension without drawing any comparison between such facilities and those to be provided by the public utility. If a group of persons should elect to be served with nonpublic utility electric service, such election was said to be their right. A person is not obligated to take service from a public utility alone, nor has a public utility exclusive rights to serve in a town in Wisconsin.

In considering the presence of alternative facilities, the commission did not give the coöperative organization the standing of a public utility as asserted by counsel for the utility, but merely recognized the coöperative as a means through which persons, banded together to construct their own electric facilities, became articulate in their opposition to an extension of electric facilities in a given area. *Re Wisconsin Power and Light Co. (CA-237).*

Utility May Abandon Rural Line Unless Customers Pay Proper Rates

An electric utility company was authorized to abandon a rural electric line where customers were unwilling to pay charges conforming with the utility's approved schedules. The line at the time of the proceeding was actually out of service because of its destruction by an ice storm.

The line had originally been built several years ago under a contract with a group of customers requiring them to advance a part of the cost of the line, with a provision for refund by crediting on monthly bills. The customers were getting service at the rates effective within a near-by city, considerably lower than the rural rates of the company. Because of the widening of a road it would be necessary for the line to be removed from its present location and reconstructed throughout a substantial part of it. The customers had declined to execute a new electric service contract conforming with existing rural requirements.

The commission pointed out that under the law it was obliged to authorize the utility to charge for service rendered in conformity with its schedule on file and in effect, such schedule being reviewable at any time that sufficient cause might be brought to the attention of the commission for making a further investigation of the rates to be charged for the particular class of service in question. The customers, it was said, were entitled to service at the lowest rates possible, but

the rates must be sufficient to bear the burden of rendering the service. The burden could not be placed on other customers. The commission continued:

> The commission is in sympathy with the extension of electric service to rural customers. It is of the opinion that adequate electric service is one of our most desirous commodities to be made available in rural areas. It is, however, absolutely necessary to realize that there are certain costs to be incurred in furnishing that service and the customers served should pay for it. The applicant contends that these customers have had the service for some seventeen years at rates not compensatory, and that may be true. They have been very fortunate in securing it at the lower rates, but now since the applicant insists upon not reconstructing the line or continuing the service unless paid for at its regular schedule of rates, it must be allowed to abandon the line unless the customers are willing to pay the proper rates therefor.

Re Missouri Power & Light Co. (Case No. 9287).

Perpetual Charter Disapproved

THE Pennsylvania commission denied applications by certain electric utility corporations for authority to amend their charters so as to change them from 50-year to perpetual charters. The purpose of the amendment proposal was to avoid legal complications and difficulties that might arise from a proposed merger with a company having a perpetual charter. The commission said:

> It is and has been the established policy of the department of state of this commonwealth, as well as the policy of the commission, that no public utility shall be chartered for a period exceeding fifty years. The fact that there are in existence in this commonwealth charters for a perpetual term, which charters have been issued prior to the establishment of this policy, is not a sufficient reason to require a departure therefrom.

Re Ayr Township Electric Co. et al. (Application Docket Nos. 34732–34734).

Other Important Rulings

The Colorado commission authorized discontinuance of certain passenger train service where a substantial saving would result in the operation of a bankrupt railroad and no abandonment of service to any community was contemplated, although some passengers would be inconvenienced because of a transfer. The commission said that if a great number of passengers were inconvenienced this might be sufficient to justify an order denying the proposed change in service, but the record showed that very few passengers rode on these trains between the points involved in the proceeding. It was said that railroads are entitled to exercise all reasonable business economies which still leave the public enjoying at least comparatively safe, adequate, and economical transportation service. *Re Chicago, Rock Island and Pacific Railway Co. (Investigation & Suspension Docket No. 217, Decision No. 9320).*

The Pennsylvania commission, in ordering certain motor carriers to cease and desist from transporting property for compensation between points in Pennsylvania in intrastate commerce, said that if such carriers engaged in interstate transportation as common carriers they could not lawfully haul for anyone in intrastate commerce between points in Pennsylvania unless and until they had first secured approval of such service from the commission. *Eastern Pennsylvania Certificated Carriers Committee v. Metzger et al. (Complaint Docket Nos. 11257, 11258, 11260, 11262, 11263, 11268).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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UNITED STATES SUPREME COURT

Midland Realty Company

v.

Kansas City Power & Light Company

[No. 217.]

(— U. S. —, 81 L. ed. —, 57 S. Ct. 345.)

Rates, § 24 — Powers of state — Contract rates.

1. The state has power to annul and supersede rates previously established by contracts between utilities and their customers, p. 115.

Rates, § 216 — Change of contract rate by filing — Impairment of contract — Deprivation of property.

2. No unconstitutional impairment of the obligation of contracts or deprivation of property without due process of law results from the enforcement of rates duly filed pursuant to the provisions of the Public Service Commission law to supersede lower rates fixed by a contract, between a customer and an electric utility, entered into prior to enactment of the regulatory law, p. 115.

Rates, § 50 — Powers of Commission — Change in contract rates — Constitutionality.

3. No unconstitutional impairment of the obligation of contracts or deprivation of property without due process of law results from the promulgation by the Commission, in accordance with the statute, of higher rates to supersede rates fixed by a contract entered into prior to the enactment of the public utility regulatory law, p. 115.

Rates, § 3 — Recovery in excess of contract rates — Constitutionality.

4. No unconstitutional impairment of the obligation of contracts or deprivation of property without due process of law results from a judicial requirement that a customer pay for electric service amounts based upon duly filed rate schedules and rates fixed by a Commission order to supersede contract rates, even though the contract was in due time fully performed and the customer prior to the commencement of a suit by the utility company to recover the additional amount had paid the contract rates, since the customer was not injured by the company's failure to withhold service or more promptly to sue for the difference between its lawful charges and the amount paid, and the customer cannot derive any advantage from refusal to pay, p. 115.

[February 1, 1937.]

APPEAL *from judgment of Supreme Court of Missouri in favor of electric utility company suing to recover amounts in excess of utility charges as fixed by a contract; affirmed. For lower court decision, see — Mo. —, 93 S. W. (2d) 954.*

APPEARANCES: Elliott H. Jones, of Kansas City, Missouri, argued the cause for appellant; Ludwick Graves and Irvin Fane, both of Kansas City, Missouri, argued the cause for appellee.

Mr. Justice BUTLER delivered the opinion of the court: The questions for decision are whether, as construed in this case by the highest court of Missouri, the statutes of that state regulating public utilities violate Art. 1, § 10, of the Constitution of the United States, declaring that "No state shall . . . pass any . . . law impairing the obligation of contracts . . . ," or § 1 of the Fourteenth Amendment declaring "nor shall any state deprive any person of life, liberty, or property, without due process of law."

Appellee was plaintiff and appellant defendant below. They made a contract whereby the former for specified rates agreed to furnish the latter steam for heating its buildings in Kansas City for a term of five years ending August 31, 1913, with option to defendant to extend the contract for an additional five years. March 17, 1913, the state Public Service Commission Law was enacted.[1] May 29th, following, defendant exercised its option and so extended the term of the contract to August 31, 1918.

June 28, 1917, plaintiff in pursuance of the statute[2] filed with the Commission a schedule of steam-heating rates to become effective August 1, 1917; they were higher than those specified in the contract. The city and numerous users other than defendant objected; the Commission, without attempting to apportion operating expenses and values between plaintiff's heating and electric service, found that the rates filed were unreasonably high and prescribed, as just and reasonable, rates lower than those filed but higher than the contract rates and made them effective March 1, 1918, 5 Mo. P. S. C. R. 664. Plaintiff filed a new schedule in accordance with the Commission's order.

June 11, 1918, it complained that these rates were confiscatory. The Commission, after apportioning operating expenses and values between the electrical and steam services, found the rates "inadequate, unjust, and unreasonably low," that during none of the time was "heating revenue sufficient to even meet the fuel expense alone," and that "heretofore the steam-heating business has been carried at a loss, and this loss has been borne either by the light and power consumers or by the company." Thereupon, it ordered new and higher rates effective December 1, 1919. 8 Mo. P. S. C. R. 223, 292. The findings and order of the Commission were approved by the supreme court in State ex rel. Case v. Public Service Commission, 298 Mo. 303, P.U.R.1923E, 431, 249 S. W. 955.

For steam furnished defendant after August 1, 1917, plaintiff regularly sent bills based on the rates it had filed with the Commission. Claiming the contract rates still to be applicable, defendant paid amounts calculated in accordance with them. Plaintiff gave defendant credit for the

[1] Mo. Rev. Stats. 1929, Chap. 33, §§ 5121 et seq.

[2] Mo. Rev. Stats. 1929, §§ 5190 (12), 5209.

payments it made. After expiration of the period covered by the contract as extended, plaintiff brought this suit. For steam furnished after August 1, 1917, and before March 1, 1918, it sought to recover on the basis of the charges specified in the first schedule filed. For steam furnished after March 1, 1918, to the end of the contract term, it sought to recover on the basis of charges of the schedule promulgated by the Commission. The trial court held plaintiff not entitled to recover on its claim in respect of the first period but gave judgment in its favor in respect of the other one. Both parties appealed. The Missouri supreme court ruled the contract rates not applicable, held plaintiff entitled to recover on its claim in respect of both periods, and directed that it have judgment for the sums calculated on the basis of the schedules filed with the Commission.

Defendant's contention is not that the state lacked power by appropriate action to establish and enforce just and reasonable rates but that, as against the constitutional provisions invoked, the action taken under the Public Service Commission law was not sufficient to abrogate the contract rates.

[1–4] Specifically, its complaints are that the court construed the statute (1) to make (a) mere filing of plaintiff's schedule and (b) the later promulgation of a schedule by the Commission effective to abrogate the contract rates and (2) to require that, although the contract was in due time fully performed and defendant prior to the commencement of the suit had paid plaintiff the contract rates, it was bound to pay additional amounts calculated on the basis of the higher rates specified in plaintiff's published schedules. It is upon these grounds that defendant contends that the state law violates the quoted clauses of the Constitution.

These questions are to be decided upon the construction that the state supreme court put upon the statute. And that law is to be taken as if it declared that rates made in accordance with its provisions shall supersede all existing contract rates.[3] There is here involved no question as to the validity of the rates prior to the passage of the statute. Without expression of opinion, we assume that then the parties were bound by the contract. But the state has power to annul and supersede rates previously established by contract between utilities and their customers.[4] It has power to require service at nondiscriminatory rates, to prohibit service at rates too low to yield the

[3] Fulton v. Public Service Commission (1918) 275 Mo. 67, 204 S. W. 386; State ex rel. Sedalia v. Public Service Commission (1918) 275 Mo. 201, 209, P.U.R.1919C, 507, 204 S. W. 497; Kansas City Bolt & Nut Co. v. Kansas City Light & P. Co. (1918) 275 Mo. 529, 204 S. W. 1074, affirmed (1920) 252 U. S. 571, 64 L. ed. 721, 40 S. Ct. 392; State ex rel. Washington University v. Public Service Commission (1925) 308 Mo. 328, 342, P.U.R.1926A, 764, 272 S. W. 971; State ex rel. Kansas City Pub. Service Co. v. Latshaw, 325 Mo. 909, 917, 918, P.U.R.1930D, 348, 30 S. W. (2d) 105; State ex rel. Kirkwood v. Public Service Commission, 330 Mo. 507, 521, P.U.R.1932E, 253, 50 S. W. (2d) 114.

[4] Union Dry Goods Co. v. Georgia Pub. Service Corp. 248 U. S. 372, 63 L. ed. 309, P.U.R.1919C, 60, 39 S. Ct. 117, 9 A.L.R. 1420; Producers Transp. Co. v. Railroad Commission, 251 U. S. 228, 232, 64 L. ed. 239, 242, P.U.R.1920C, 574, 40 S. Ct. 131; Kansas City Bolt & Nut Co. v. Kansas City Light & P. Co. (1920) 252 U. S. 571, 64 L. ed. 721, 40 S. Ct. 392; Sutter Butte Canal Co. v. California R. Commission (1929) 279 U. S. 125, 137, 73 L. ed. 637, 640, 49 S. Ct. 325.

cost rightly attributable to it,[5] and to require utilities to publish their rates and to adhere to them.[6] Under the challenged statute, defendant had opportunity to support the contract rates and to test before the Commission and in the state supreme court—as others did—the validity of the filed schedules.[7] It failed to do so. And it here insists that the contracts could not be abrogated "without a proper hearing, finding, and order of the Commission with respect thereto." It does not, and reasonably it could not, contend that immediate exertion by the legislature of the state's power to prescribe and enforce reasonable and nondiscriminatory rates depends upon or is conditioned by specific adjudication in respect of existing contract rates.[8] It is clear that, as against those specified in the contract here involved, the rates first filed by plaintiff and those promulgated by the Commission in accordance with the statute have the same force and effect as if directly prescribed by the legislature.[9]

Lacking in merit is defendant's contention that the statute violates the clauses of the Constitution invoked because held by the court to require that, although before this suit the service had been furnished and paid for in accordance with the contract, defendant was bound to pay more. As shown above, the rates specified in the schedules were held applicable from and after their respective effective dates. Defendant was not injured by plaintiff's failure to withhold service or more promptly to sue for the difference between its lawful charges and the amount paid. It cannot derive any advantage from refusal to pay.[10]

Plainly, enforcement of the rates in accordance with the statute did not violate either the contract clause of the Constitution or the due process clause of the Fourteenth Amendment.

Affirmed.

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[5] Montana Pub. Service Commission v. Great Northern Utilities Co. 289 U. S. 130, 135, 77 L. ed. 1080, 1084, P.U.R.1933C, 225, 53 S. Ct. 546. Cf. Northern P. R. Co. v. North Dakota ex rel. McCue, 236 U. S. 585, 604, 59 L. ed. 735, 745, P.U.R.1915C, 277, 35 S. Ct. 429, L.R.A.1917F, 1148, Ann. Cas. 1916A, 1.

[6] Armour Packing Co. v. United States (1908) 209 U. S. 56, 81, 52 L. ed. 681, 694, 28 S. Ct. 428; Louisville & N. R. Co. v. Maxwell, 237 U. S. 94, 97, 59 L. ed. 853, 855, P.U.R.1915C, 300, 35 S. Ct. 494, L.R.A.1915E, 665.

[7] Mo. Rev. Stats. 1929, §§ 5191, 5232–5237. See State ex rel. Washington University v. Public Service Commission, *supra*.

[8] Louisville & N. R. Co. v. Mottley (1911) 219 U. S. 467, 55 L. ed. 297, 31 S. Ct. 265, 34 L.R.A.(N.S.) 671.

[9] Public Service Commission v. Pavilion Nat. Gas Co. (1921) 232 N. Y. 146, 150, P.U.R.1922C, 74, 133 N. E. 427; North Hempstead v. Public Service Corp. 231 N. Y. 447, 450, P.U.R.1921E, 713, 132 N. E. 144.

[10] Louisville & N. R. Co. v. Central Iron & Coal Co. (1924) 265 U. S. 59, 65, 68 L. ed. 900, 902, 44 S. Ct. 441.

J. M. Ward et al.

v.

Limestone Water & Sewer Company

[F. C. Nos. 1072, 1076, 1081.]

Rates, § 130 — Reasonableness — Adequacy of service — Fire protection.

1. A water company furnishing inadequate, unsatisfactory, and low-grade fire protection should not be authorized to increase hydrant rates, p. 119.

Rates, § 619 — Fire protection — Value of service — Insurance rates.

2. Computations to show the additional premiums which would be paid by policyholders if hydrants were removed do not prove much with respect to the value of hydrant service when the figures are based on assessed property valuation, while all people do not insure to the full tax value of their property and all people do not carry insurance, p. 120.

Rates, § 619 — Water — Fire hydrants — Adequacy of service — Mutually agreed rates.

3. An amount which a municipality has willingly paid and which a water company has been willing to accept for fire protection is assumed to be a rate for reasonably adequate fire protection; and when fire protection service is inadequate, such amount should be reduced, p. 120.

Return, § 16 — Reasonableness — Rights of customers and stockholders.

4. The public cannot be subjected to unreasonable rates in order simply that stockholders may earn dividends, p. 120.

Rates, § 172 — Reasonableness — Value of service — Fire protection.

5. A town should pay no more for fire protection service than is justified by the value of the service, p. 120.

Rates, § 100.1 — Commission jurisdiction — Sewers.

6. The Commission has no jurisdiction over complaints against sewerage rates, p. 121.

Rates, § 130 — Reasonableness — Adequacy of service — Presumption as to past rates.

7. Water rates which have been in effect for several years are assumed to represent fair rates for adequate service, and when service is inadquate, rates should be reduced to an amount representing the worth of the service, p. 121.

[November 20, 1936.]

COMPLAINTS *against water and sewerage rates and applications for water rate increase; water rates reduced and rate increase denied.*

APPEARANCES: J. W. Patterson, Millbury, Massachusetts, for Limestone Water and Sewer Company; Pendleton and Rogers, Caribou, for the town of Limestone in F. C. No. 1081.

By the COMMISSION: F. C. No. 1072 is a complaint received by the Commission June 29, 1936, signed by the selectmen of Limestone and ten residents of the town, alleging: "the amount charged by said Limestone Water and Sewer Company for hydrant rental is too high," and asking for an investigation.

F. C. No. 1076 is a petition received by the Commission June 29, 1936, signed by thirty-four citizens of Limestone asking for an investigation of the Limestone Water and Sewer Company, believing: "charges for water and sewerage to be exorbitant and unfair."

F. C. No. 1081, on August 20, 1936, the Limestone Water and Sewer Company filed a schedule of rates, to become effective October 1, 1936, which schedule showed in all but one instance (schools) an increase over the then existing rates.

The Commission, being satisfied that sufficient grounds existed to warrant a formal public hearing, suspended the proposed rates, pending investigation and final order, for a period of three months from September 30, 1936, unless otherwise ordered by the Commission.

Hearing was held as ordered, in Limestone, on October 13, 1936, and notices were proved as ordered in the several cases.

At the hearing, to expedite matters, it was agreed by the several parties involved that the three cases should be heard at the same time and together as one consolidated case.

The Limestone Water and Sewer Company was incorporated June 21, 1912, under the General Laws of the state of Maine, for the purpose of supplying water and sewerage service to the inhabitants of Limestone; to quote:

"The purposes of said corporation are the supplying the town of Limestone in the county of Aroostock and the inhabitants of said town with pure water for domestic, sanitary, and municipal purposes including extinguishment of fires. The supplying the said town of Limestone and the inhabitants of said town, with sewers for domestic, sanitary, and municipal purposes. The doing any and all things necessary or properly pertaining to the conduct of said business."

We will take up the several matters seriatim.

F. C. No. 1072—The complainant says hydrant rental is too high; the company counters with a petition to increase hydrant rentals from $75 to $100 per hydrant.

Prior to the last three or four years there was a contract of some twenty years' standing, fixing a rate of $75 per hydrant between the town and the company. Last June or July the company tried to get the town to sign another contract for the same amount, to wit: $75 per hydrant, with a further provision that the town tax to the company should not be more than it was in the year 1934.

There are at present 23 hydrants located in the town. The town refused to sign this proposed contract, because they felt that they were not getting

proper service for fire protection. The evidence shows: (1) that the local fire department during the past winter has been unable to get water from some of the hydrants that they hooked onto; (2) that water during the summer months has come out around the casings instead of the plug, in some instances; (3) that some hydrants have plugs about 3 inches above the ground, rendering the service difficult, particularly in the winter; (4) that when the water is low in the reservoir, there is practically no pressure at the fire nozzle; (5) that at times there is no water in the hydrants at all; (6) that some plugs face back from the street instead of into the street; (7) there have been fires that could have been stopped if the department had water; (8) there have been fires that could have been stopped if hydrants had not been frozen; (9) in 1922 (this was prior to the operation of the company by its present management), a fire nearly wiped out the business section because of no water; (10) the town has spent $8,250 for pumpers to afford protection against fire; (11) at a fire on February 22, 1936, a hydrant yielded no water; (12) that a steamer plug on one hydrant is of no use; (13) another hydrant was plugged at the bottom; (14) another hydrant is always frozen in the winter; (15) two others leak; (16) another is covered with bushes in summer and snow in winter; (17) another hydrant leaks at the plug, the department tried to shut it off but could not; took the hose off and opened it and out came a big piece of garden hose; (18) at another fire in 1932, a hydrant was turned on, and because it did not drain off, it froze up solid, and the fire department had to pick up another hydrant to fight the same fire; (19) sometimes the water just comes out of the nozzle of the fire hose; (20) the water supply with two lines of hose would probably last three hours; (21) at the Phair fire, the water lasted one-half hour; (22) of the twenty-three hydrants, nine are perhaps adequate, if there is water in the reservoir; (23) there is not pressure enough on a new hydrant installed two years ago to throw water to the second window of the junior high school; (24) that some fire hydrants have not been shoveled out in winter (the evidence is not just clear on whom this duty falls); (25) the reservoir, due to leaks, does not hold a satisfactory amount of water.

[1] It is unnecessary to continue the indictment, except to add that complaints in regard to service have been unavailing. The company has been repeatedly requested to remedy conditions, has intimated something would be done, but actually has done nothing to straighten out these troubles, some of which little expense and effort could correct. As the fire chief, Dr. Damon, said, "Nothing can be gained by notifying the company." It is to be noted that no part of this condemning testimony was refuted by the company at the hearing; no excuses, if there could be such a thing, were offered. The company, in the face of these complaints, offered no suggestions, gave no indication of bettering the service, but had the effrontery to file a schedule asking for more money for hydrant service, from which, in view of the testimony, the Commission can draw but one conclusion, and that is, that the hydrant service in the

town of Limestone is lamentable. To give the company more money for this inadequate, unsatisfactory, and low-grade fire protection would be a travesty.

[2] The company's only testimony, which was admitted without objection, with regard to the present fire protection in the town, was confined to figures which indicated that at the present time, with the hydrants as installed, the rate of insurance is 53 cents per hundred in residential areas and $2.33 in the business section. The company further said that if there were no fire protection at all, the rates would go to $1.10 in the residential areas and $3.32 in the business section. The company then figures that on a valuation as given by the selectmen, the additional premiums to be paid by policyholders, if the hydrants were removed, would be $4,594.09. Such figuring does not prove much. All people do not insure to the full tax value of their property; all people do not carry insurance. The absolute elimination of fire protection service would, of course, result in higher insurance premiums but certainly the result would not necessarily be as the company's proposed figures would suggest.

[3–5] In Brunswick & T. Water Dist. v. Maine Water Co. (1904) 99 Me. 371, 381, 59 Atl. 537, our court observed:

"The company engages in a voluntary enterprise. It is not compelled, at the outset, to enter into the undertaking. It must enter, if at all, subject to the contingencies of the business, and subject to the rule that its rates must not exceed the value of the services rendered to its customers. It has accepted valuable franchises granted by the state, franchises ordinarily exclusive for the time being, franchises which ordinarily debar the public from serving themselves satisfactorily in any other way,—and in return it must perform the duties to the public which it has voluntarily assumed, at rates not exceeding the value of the services to the public, taken as individuals, and this irrespective of the remuneration it may itself receive."

Over a period of years it has apparently been agreed between the town and the company that the fire service was worth $1,725. This is further evidenced by the testimony of one of the selectmen that in June or July of 1936, the old contract having expired, the company desired to enter into a new contract with the town on a basis of $1,725 for fire protection, with a further provision that the tax should not exceed that assessed in 1934.

The town has been willing to pay $1,725 for fire protection, based, of course, on a reasonably adequate protection. It is apparent that no single one of the complaints enumerated was sufficient to cause the town to change its mind in this regard. The town has been of the hope that many of these defects would be cured, and has been led to believe that they would be, but for some unknown reason they have not been. The company likewise seemed to be of the opinion that fire protection was worth $1,725 (and no change in tax from 1934), but we cannot do other than assume that the rate, according to the company, was for a reasonably adequate fire protection.

This Commission has had occasion, in Gay v. Damariscotta-Newcastle Water Co. P.U.R.1932E, 289, 296,

to state that the rates to be charged must not exceed the value of the service, regardless of the return to the company. To quote:

"In establishing a utility rate sufficient to produce a fair return, the character and quality of the service rendered must be taken into consideration, and the rate must be limited by what the service is reasonably worth, even though the return on the fair value of the property is less than the average recognized reasonable rate of return."

Further, in Kennebec Water Dist. v. Waterville (1902) 97 Me. 185, 187, 54 Atl. 6, 60 L.R.A. 856, it is held that what the public has a right to demand is that no more shall be exacted than the services rendered are reasonably worth. The public cannot be subjected to unreasonable rates in order simply that the stockholders may earn dividends.

Revised Stats. Chap. 62, § 16, reads:

"Every public utility is required to furnish safe, reasonable, and adequate facilities. The rate . . . for any . . . water . . . furnished . . . or for any service rendered or to be rendered in connection with any public utility, shall be reasonable and just, taking into due consideration the fair value of all its property with a fair return thereon, its rights and plant as a going concern, business risk, and depreciation. Every unjust or unreasonable charge for such service is hereby prohibited, and declared unlawful."

In view of the testimony in the case, the Commission concludes that as both the town and the company have, up to the time of the filing of the hydrant complaint, considered the fire protection as worth $1,725, it naturally follows that such a substantial sum of money (practically one third of the company's income) must have entitled the town to reasonably adequate fire protection. We do not feel that in estimating the worth of the fire protection service that it would be exactly fair to apply the rule of thumb method that approximately one half of the hydrants, which are apparently adequate when there is sufficient water in the reservoir, represent the sum total of the value of the service. Giving consideration to all of the factors in the case, the Commission finds that the value of the service as rendered by the company for fire protection is $950, which, as long as present conditions exist, is all that the town should pay for the protection it is receiving.

[6] F. C. No. 1076 is a complaint asking for an investigation of water charges of the Limestone Water and Sewer Company, alleging that the same are exorbitant and unfair. That portion of the petition relating to sewerage is not a matter over which this Commission has jurisdiction.

[7] The evidence as to domestic service shows: (1) that in February, 1936, the customers were without water for one or two days and two or three nights; (2) that the water has been shut off at various times without warning; (3) that there is no water pressure; (4) at times some customers have had no water at all, this witness stating that this happened twice the week preceding the hearing; (5) that customers have had to haul water, due to insufficient supply; (6) that the company sometimes carries only a

foot of water in the reservoir, at which time the customers' supply is inadequate; (7) that the pressure is low and insufficient in some localities; (8) that one customer has had to haul water one-half mile, as none was available at the faucet; (9) that in the high school building the pressure is so low at a drinking fountain on the second floor that the students try to obtain water by sucking at the drinking fountain, which is quite unsanitary; (10) that at times, to quote, "the water more than tastes, it stinks," showing improper operation of the chlorinator; (11) that customers on the higher elevations are without water frequently and only get some when the standpipe has around 3 feet of water in it; (12) the reservoir leaks so badly, it does not hold enough water for general purposes.

The present rates, which have been in effect for some thirteen years, are what, in general, would be termed fairly high rates: First faucet being $12.50; first toilet, $6.25; first bath tub, $6.25, for dwellings, stores, etc. Hotels and boarding houses have a first faucet rate of $15; first toilet rate of $7.50; and first bath tub rate of $7.50.

It is apparent from the reading of the record that the reservoir is not in good shape, that due to leaks it is practically impossible to hold more than 3, and at the outside, 4 feet of water, and that many of the troubles of the company are due to this bad condition of the reservoir and pumping service incident to same. Various customers of the company, who appeared as witnesses, testified as to being obliged to haul water in the winter, and in this case, as in the hydrant case, it is a question of value of service to the customer.

The rates above quoted have been in effect, as stated, for some thirteen years, and the Commission is obliged to assume that those rates represent fair rates between the company and the customers for adequate service. It is apparent to the Commission that the customers have not been getting an adequate service.

The evidence shows that in 1929, operating expenses, taxes, and depreciation exceeded operating revenues by $293.95; in 1930, by $427.79. In 1931, the figures showed on the plus side $124.46, and in 1932, $138.10. In 1933, the loss was $15.12, in 1934, $545.63, and in 1935, $1,500.32. A part of this increase in loss is due to the change of the item of depreciation from $337.72 (as carried in 1929-30-31 and 32) to $1,330.20 in 1935. The company has not been a paying concern. There are approximately 180 customers, whose payments, plus $1,725 for fire protection, constitute in general the sole sources of revenue. Some customers testified that any increase in rates would mean operating their own wells.

According to an appraisal made by the staff of the Commission, the cost of reproduction new less depreciation of Limestone Water and Sewer Company with respect to the portion devoted to water service was $57,031. The fixed capital of the company, as carried on their books as of December 31, 1935, is $44,593.20.

This Commission, in Public Utilities Commission v. Wiscasset Water Co. P.U.R.1932C, 34, 37, laid down the principle that the value of service

to the customer is one of the factors which should be taken into consideration in determining the basis for rates of a water utility. The law quoted in the hydrant matter, previously referred to in this decision, is applicable here and need not be repeated.

Taking into consideration the various factors as enumerated in this opinion, it seems to the Commission, and it finds, in view of the service being rendered, that the first faucet in dwellings, stores, offices, and other services is not worth more than $10 per annum, and that the first faucet in hotels and boarding houses is not worth more than $12 per annum.

F. C. No. 1081, as previously stated, involves a schedule of rates filed by the Limestone Water and Sewer Company, on August 20, 1936, to be effective October 1, 1936, proposing certain increases indicated in the following tabulation:

Dwellings, Stores, Offices, and Other Services Not Otherwise Specifically Provided for Herein	Present	Proposed
First faucet	$12.50	$16.00
First toilet	6.25	8.00
First bathtub	6.25	8.00
Hotels and Boarding Houses		
First faucet	15.00	25.00
First toilet	7.50	10.00
First bathtub	7.50	10.00
Municipal Service		
Hydrants, each	75.00	100.00
Schools, each	100.00	50.00

In support of the proposed rates, the company claims that the present rates are not sufficient to meet operating expenses and bond interest, and further, that the additional revenue of $1,341 per year to be obtained from the new rates is necessary to meet in part what is required, and at the same time to provide for certain plant improvements.

Being mindful of the provisions of the statute that a utility is required to furnish reasonable and adequate services and that the compensation therefor shall be on the basis of reasonable and just rates, and in view of the conclusions reached in F. C. No. 1072 and F. C. No. 1076, we have no alternative but to deny the rate increases proposed by the company.

It is accordingly *ordered, adjudged,* and *decreed*

1. That the present annual charge of $75 assessed by the Limestone Water and Sewer Company for each municipal hydrant is unreasonable and unjust for the value of the service now furnished, and said water company is hereby required to file and make effective, on or before January 1, 1937, an annual charge of $950 for the municipal fire protection now being furnished in the town of Limestone;

2. That the present rates or charges imposed by said water company for first faucets are, in view of the inadequacy of the water service, unreasonable and unjust, and said water company is hereby required to file and make effective, on or before January 1, 1937, the following rates: for dwelling houses, stores, offices, and other services not otherwise specifically provided for, a first faucet rate or charge of $10 per annum; and for hotels and boarding houses a first faucet rate or charge of $12 per annum;

3. That the proposed rate increases filed by said Limestone Water and Sewer Company, to be effective Oc-

tober 1, 1936, now under suspension in F. C. No. 1081, be, and the same hereby are, disallowed; and

4. That the annual rates or charges required to be filed in accordance with Paragraphs 1 and 2 of this order remain in force until otherwise ordered by this Commission.

WISCONSIN PUBLIC SERVICE COMMISSION

Wisconsin State Rural Electrification Coördination Committee

v.

Northern States Power Company

[2-U-992.]

Rates, § 367 — Electric — Wholesale to coöperatives.

1. Such factors as points of connection, capacities available, expense of system reënforcement, contract terms, credit risks, insurance protection, territorial agreements and other legal difficulties in connection with furnishing electric service at wholesale to a coöperative organization are not so dissimilar from those encountered in furnishing certain other classes of service, such as commercial service, where customers with widely divergent load characteristics have been included in one separate and distinct rate classification as to make it impossible to include such coöperatives under one rate schedule filed on an open order basis, p. 125.

Rates, § 367 — Electric — Wholesale to coöperatives.

2. The functional use of srevice by various coöperative associations is such as legally to justify a separate and distinct rate classification, provided that a rate schedule can be designed which is sufficiently comprehensive to take proper consideration of the load characteristics of the various customers so as to prevent discrimination between customers within the classification, p. 125.

Rates, § 367 — Electric — Wholesale to coöperatives.

3. A close relationship should exist as a general principle between the rate schedules available to electric coöperatives and to municipal and private utilities under similar circumstances and buying similar kinds of power, p. 126.

Service, § 119 — Duty to serve — Effect of territorial agreement.

4. Territorial agreements between electric utilities in towns which are jointly served should not be controlling in determining whether an electric utility must furnish wholesale service to coöperative organizations, it appearing that the only competition involved is that regarding the source of supply, and if the purchaser owns the facilities necessary to connect to the lines of the vendor, no claim to an invasion of territorial rights can be sustained, p. 127.

WISCONSIN S. R. E. C. COMMITTEE v. NORTHERN STATES P. CO.

Rates, § 328 — Electric — Power factor provisions.

5. An electric utility furnishing service to a coöperative organization should not apply power factor adjustment provisions until such time as the company may adopt such provisions in other schedules, such as schedules for retail and wholesale power and municipal resale customers, p. 127.

[September 25, 1936.]

ORDER to show cause why electric utility company should not file and make effective a rate schedule applicable to coöperative associations within its territory; utility ordered to file rate schedule together with rules and regulations. On rehearing the Commission affirmed its order with certain modifications, among other things permitting the application of a power factor provision in view of the company's statement that it was ready and willing to apply such a factor provision to both its municipal and coöperative resale customers. November 17, 1936.

By the COMMISSION: The application in this proceeding was filed with the Commission on April 21, 1936, and alleges that the rate schedule proposed by the respondent as applicable for service to coöperative associations was excessive and unreasonable. The committee requested the Commission to institute proceedings looking toward a reduction in the wholesale rate available for coöperative associations.

On April 24, 1936, the Commission issued a notice of hearing and an order directing the company to show cause why it should not file and make effective a rate schedule applicable to coöperative associations within its territory.

Hearing in this matter was held in Madison on May 20, 1936, at which the following appearances were entered: Wisconsin Rural Electrification Coördination Committee, by O. S. Loomis, Director, John A. Becker, Rural Electric Coördinator, and B. W. Huiskamp, Counsel; Northern States Power Company, by John Campbell, Attorney of Bundy, Beach and Holland, Eau Claire, and G. V. Rork, Vice President and General Manager; Chippewa Light and Power Coöperative Association and Holcombe Farmers Coöperative Electric Association, by Paul Raihle, Attorney, Chippewa Falls.

Although the company has not filed any rate with the Commission which would be applicable to coöperative associations on an "open order" basis, the company indicated to the Commission that it had offered the following rate and contract form to one of the coöperative associations in its territory: [Contract omitted.]

[1, 2] The respondent in this case contends that the characteristics of the loads of the various proposed coöperatives are so variable as to make it impossible to include them under one rate schedule filed on an "open order" basis. Among the factors listed by the company in support of its contention are points of connection, capacities available, expense of system re-

ënforcement, contract terms, credit risks, insurance protection, territorial agreements, and other legal difficulties.

As we have stated in previous orders affecting similar applications, we believe that the various difficulties enumerated are not entirely dissimilar from those encountered in furnishing certain other classes of service, such as commercial service, where customers with widely divergent load characteristics have heretofore been included in one separate and distinct rate classification. The arguments put forward by the company are not persuasive that legally a separate rate classification effective on an "open order" basis should not be provided.

It appears to us that the functional use of the service by the various coöperatives is such as to legally justify a separate and distinct rate classification, provided that a rate schedule is designed which is sufficiently comprehensive to give proper consideration to the differences in load characteristics of the various customers so as to prevent discrimination between customers within the classification. We see no reason why a properly designed rate schedule available for service under certain specified standard conditions should not be offered on an "open order" basis to any coöperative association which will comply with the terms and conditions of the rate schedule.

[3] In previous orders involving rate schedues of other companies applicable to coöperatives, we have held as a general principle that a close relationship should exist between the rate schedules available to electric coöperatives and to municipal and private utilities under similar circumstances and buying similar kinds of power. In this proceeding the Coördination Committee contended that the proposed rate set forth above is excessive and unreasonable. On the other hand the level of this rate is lower in general than the rate schedule now being applied to wholesale service to municipal utilities. The company has explained this relationship by the fact that it is now in the process of revising its schedule of rates for wholesale service to municipalities.

Under docket 2-U-657 (4 P.U.R. (N.S.) 395) the Commission is engaged upon a general investigation of the rates, rules, and practices of Northern States Power Company of Wisconsin. Both the company and the Commission have introduced exhibits in this general case giving various estimates of the value of the company's property and the costs of serving the several classes of customers. These conflicting estimates reflect different opinions of the amount and proper allocation of firm and dump power produced in Wisconsin and sold both intrastate and interstate.

Checking of these exhibits and of the property is now going on. Until this work is completed and the testimony heard and analyzed, the Commission cannot make final findings of the reasonable cost of resale service, such as is involved in the present case.

The company now sells power to a number of municipally and privately owned utilities for purposes of resale. Revenues from this class of business exceeded $150,000 in 1935. Although this class of service is not directly involved in this proceeding, the Commission in several recent orders has

stated its opinion that rates to rural coöperatives for resale should not be materially out of line with rates to municipal resale customers, if such rates appear reasonable.

With this principle in mind, the Commission has examined the testimony and evidence thus far introduced in 2-U-657. Although final findings cannot yet be made, it appears that the general level of the company's resale rates is probably higher than reasonable, even when the company's claimed property values are given material weight. The company is now engaged upon a revision of this rate schedule. However, since a final determination of reasonable costs of resale service and an equitable rate schedule based thereon can best be made only after completing this phase of the general investigation, we shall establish herein only a temporary schedule which is subject to further adjustment in accordance with later findings. The rate schedule for rural coöperatives herein ordered is lower than the present resale rate of this company and approximately in line with other rural coöperative resale schedules recently prescribed by the Commission for other companies. The rate schedule herein ordered is, however, not to be construed as establishing a level for resale rates to be prescribed hereafter either in our general investigation or in a separate docket. Jurisdiction is retained in this case to alter or revise our order in accordance with any subsequent findings relative to rates for other resale customers.

[4] This company, as well as other companies in similar proceedings, raised the question of furnishing service to coöperatives either outside of their service area or to coöperatives whose service might be competitive with their own retail service. It has also been contended in this connection that to furnish service to another agency which would be serving within the service area of a neighboring company with which the vendor had a territorial agreement would be in violation of the spirit, if not the letter, of such territorial agreement. While the Commission appreciates the necessity for such territorial agreements between utilities in towns which are jointly served, we do not believe that they should be controlling in a situation such as this. The only competition involved is that regarding the source of supply, and certainly if the purchaser owns the facilities necessary to connect to the lines of the vendor, no claim to an invasion of territorial rights can be sustained. So far as furnishing service to a coöperative serving in the same service area as the vendor utility is concerned, we do not believe that the utility's failure to completely serve the area can be invoked as an impediment against serving another agency which has been successful in soliciting members in the area.

The proposed rate schedule and rules are as follows: [Schedule omitted.]

[5] It is to be noted that the above rate does not contain any power factor adjustment provisions. An examination of the company's retail and wholesale power schedules indicates that except for one or two schedules under which few customers are served the company does not apply power factor correction clauses. No such

clauses are contained in the present schedule available to municipal resale customers. Until such time as the company may adopt such provisions in other schedules, we do not believe it should apply one to rural coöperative loads.

Any business which may be acquired under the proposed schedule would be new and additional business. Since our cost analyses indicate that on a conservative basis adequate compensation would be received for such service, we believe that the proposed rate is the maximum which should reasonably be charged for this particular class of service and that such rate should be subject to further review upon the establishment by the Commission of a reasonable level of resale rates to municipalities and other public utilities.

On the basis of the foregoing facts and conclusions the Commission therefore finds and determines that Northern States Power Company should be required to file the foregoing rate schedule available for rural electric coöperative associations and that the rate prescribed herein for that service is reasonable and nondiscriminatory.

PENNSYLVANIA SUPERIOR COURT

Blue Mountain Consolidated Water Company

v.

Public Service Commission

(— Pa. Super. Ct. —, 189 Atl. 545.)

Security issues, § 17 — Commission jurisdiction — Authorization of change in interest rate.

1. The Commission does not have power to require a public utility corporation to apply for and secure Commission approval before consummating, with the consent of bondholders, a reduction in bond interest rates, p. 130.

Security issues, § 1 — What constitutes issuance — Change in bond interest rates.

2. A reduction in bond interest rate with the consent of bondholders, acceptance of the reduction being evidenced by the holders producing their bonds to the trustee for the purpose of having the reduced rate stamped thereon, does not amount to "issuing" bonds within the meaning of the state regulatory statutes, p. 130.

Security issues, § 38 —Change in interest rate — Necessity of authorization by Commission.

3. A public service company may, without obtaining the approval of the Commission, enter into contracts with the respective holders of its bonds

providing for a reduction of the interest rate thereon, acceptance of such reduction to be evidenced by the holders producing their bonds to the trustee for the purpose of having the reduced rate stamped thereon, p. 130.

[January 29, 1937.]

APPEAL *from Commission order requiring public utility company to secure Commission approval before consummating changes in bond interest rates; reversed. For Commission decision, see 15 P.U.R.(N.S.) 493.*

Rule issued by Public Service Commission upon Blue Mountain Consolidated Water Company directing it to show cause why it should not apply for and secure Commission approval before consummating changes in bond interest rates.

The facts were agreed upon by the parties in the following stipulation:

"The Blue Mountain Consolidated Water Company, hereinafter termed 'company,' now has outstanding two issues of bonds, one being an issue of $500,000 of which $499,000 is outstanding, secured by a first mortgage or deed of trust, dated June 29, 1917, and due July 1, 1947, and one being an issue of $350,000 of which $308,000 is outstanding, secured by a second mortgage or deed of trust, dated December 31, 1929, and due January 1, 1960. The issue of first mortgage bonds bears interest at the rate of 5 per cent per annum; the issue of second mortgage bonds bears interest at the rate of 6 per cent per annum.

"Due to the low interest rates generally prevailing at the present time, the company is of the opinion that it can secure agreements with the bondholders of its several issues whereby they will accept reductions in interest of one percentum on each issue, so that the first mortgage issue will bear interest at the rate of 4 per cent per annum, and the second mortgage issue will bear interest at the rate of 5 per cent per annum.

"In the event that any bondholders would refuse to enter into such an agreement with the company, an effort would be made by individuals or institutions friendly to the company to purchase the bonds of any such objectors at a price or prices which would be agreed upon by the seller and the buyer.

"In the event that the holders of bonds would refuse to enter into voluntary agreements with the company and also refuse to sell their bonds to friendly interests, the company would exercise the right given it in each of the mortgages or deeds of trust to call bonds for the purpose of 'purchase.' These calls would be made for 'purchase' as contrasted with calling them for 'redemption.' Authority to call the bonds for purchase is contained in Art. III of each mortgage or deed of trust.

"The calling of the bonds will be conducted in the manner provided in the mortgages,—the calling to be done by lot and to continue until the bonds of all the objecting parties would be secured. In each case the call price would be paid, *i. e.*, par plus a 5-point premium for the first

mortgage bonds and par for the second mortgage bonds.

"All bonds which would thus be called in by the company for 'purchase' would then be sold to persons or institutions friendly to the company. The bonds thus purchased and sold would be sold without any change in interest rate or other alteration.

"By means of this procedure, all of the bonds of the company will be in the hands of persons or institutions who would be willing to agree to reductions in the interest rates of both issues.

"The company would then enter into a written agreement with each individual bondholder providing for the reduction of interest. This agreement would change the provisions of the bonds in no respect, other than a one per cent reduction of interest.

"Upon the execution of the agreements for the reduction of the interest, the trustee under the mortgages would then stamp on each bond a legend to the effect that from and after January 1, 1937 (the proposed effective date of the several reductions) the interest rate would be 4 per cent on the first mortgage bonds and 5 per cent on the second mortgage bonds, respectively, per annum."

Rule absolute. Respondent appealed.

Error assigned was order of the Commission making the rule absolute.

APPEARANCES: Paul H. Rhoads, John Fox Weiss, and Weiss & Rhoads, all of Harrisburg, and Smith & Paff, of Easton, for appellant; Harry H. Frank and John C. Kelley, Legal Assistants, Samuel Graff Miller, Assistant Counsel, and Richard J. Beamish, Counsel, all of Harrisburg, for appellee.

CUNNINGHAM, J.: **[1–3]** The order now before us for review had its origin in a proceeding instituted by the Commission upon its own motion. Having received information that the appellant water company "proposed to make certain changes in the interest rates of two outstanding bond issues," and being of opinion that these changes might "constitute the issuance of securities" within the meaning of Art. III, § 4, of The Public Service Company Law of July 26, 1913, P. L. 1374, as amended by § 4 of the Act of June 3, 1933, P. L. 1526, 1530, 66 PS. §§ 201–2 (Supplement) the Commission issued a rule upon appellant to show cause why it should not obtain its approval before making the changes.

Appellant answered that its proposed reductions in interest rates would not "constitute the issuance of securities," within the intendment of the statute, and moved that the rule be discharged. At the time fixed for a hearing the parties filed the agreed-upon statement of facts, which appears in the reporter's notes; upon consideration thereof, the Commission reached the conclusion that "any change in the interest rate" of either bond issue "will constitute an issue of bonds" and therefore cannot be made without the approval of the Commission; the rule was made absolute and this appeal by the water company followed.

A majority of the members of this

court are not convinced the legislature has clothed the Commission with the power it here asserts. As we read the statement of facts, it is not quite accurate to say, as does the Commission in its report, that the reduction in interest rates is to be accomplished by the "delivery of the bonds to the company by the owners, the substitution of the lower interest figure for the existing figure wherever it appears on the face of the bonds, and the return of the bonds to the owners"; nor that after the bonds have been stamped by the trustee, "the new bonds will be delivered to the public in consideration for their previous surrender of the old bonds." (15 P.U.R.(N.S.) at p. 494.)

It seems to us that the real question involved under the agreed-upon facts is whether a public service company may, without obtaining the approval of the Commission, enter into contracts with the respective holders of its bonds providing for a reduction of the interest rate thereon—acceptance of such reduction to be evidenced by the holders producing their bonds to the trustee for the purpose of having the reduced rate stamped thereon.

The powers and limitations of public service companies, with respect to the issuing of stock and securities, are prescribed by § 4 of the amendatory act of 1933, *supra*. The provisions upon which the Commission based its order read (15 P.U.R. (N.S.) at p. 494):

"Upon the approval of the Commission, evidenced by its certificate of public convenience first had and obtained, and not otherwise, and upon compliance with existing laws, it shall be lawful for any public service company

"(a) To issue stocks, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, payable in periods of twelve months or more after the date thereof, and now or hereafter to be authorized, hereinafter collectively termed 'securities,' in the manner prescribed by law, for and only for money, labor done, or money or property actually received, in accordance with the requirements of the Constitution and the laws of the commonwealth.

"All stocks, trust certificates, bonds, notes, or other evidences of indebtedness or other securities, issued in violation of the requirements of the Constitution and the laws of the commonwealth pertaining to the constitutional requirements, and all fictitious increases of stocks, trust certificates, bonds, notes, or other indebtedness or securities, shall be void.

. . . . . .

"Before issuing, disposing of, guaranteeing or assuming liability on any securities, every public service company shall file with the Commission an application, in such form as the Commission may, from time to time, determine and prescribe; . . . and in determining whether to approve or disapprove an application for the issuance of securities, the Commission is hereby authorized to regulate and control the character and amount thereof. . . ."

In this case we need not inquire whether the term "issue," as used in the statute, is intended to apply only to the execution and authentication of bonds, as held in some cases, or also

includes the delivery and putting of them into circulation, as decided in other instances. The term has been defined by the legislature itself in a paragraph added by the amendments of 1933 (66 PS, § 1, Supplement) to § 1 of Art. I, of the original act, reading:

"For the purposes of this act, the terms 'to issue,' 'issued,' 'issuing,' and 'issuance,' when used herein in connection with securities, mean and refer to securities executed by proper corporate action and duly authenticated, irrespective of whether such securities are to be disposed of, or held in the treasury of the public service company." In this connection, it should also be noted that it is provided in Par. (b) of § 4 (66 PS, § 201, Supplement) that it shall be lawful for any public service company, with the approval of the Commission, "To dispose of securities held in the treasury of the public service company: Provided, however, that such approval shall not be required in the case of securities so held that have been reacquired after title has passed out of the public service company."

As we understand the plan proposed in the statement of facts, none of the bonds now outstanding will come into the ownership and treasury of the appellant company. The provisions relative to the calling for "purchase" of any bonds held by persons unwilling to enter into an agreement for the reduction of the interest, and the sale of such bonds to persons or institutions willing to enter into the same, are not necessarily an integral part of the reduction process itself; such bonds are to be resold before any change has been made in the interest rate. At most, they would be reacquired bonds and within the proviso. Our difficulty is in seeing how the carrying out of the plan will amount to "issuing" bonds within the above-quoted legislative definition of that term.

We agree with the Commission that the primary purpose of the amendments of 1933 is to protect the public against the issuance of securities in excessive amounts or for unauthorized purposes, and that the maintenance of the solvency and credit of the utility is also one of the purposes to be served. It is doubtless true that, as stated and illustrated by the Commission in its report, the interest rate is a material factor in connection with the issuing or refunding by utility companies of their bonds. But in this case we are dealing with a reduction of the interest rate, which, if agreed to by the bondholders, will improve the credit of appellant.

In its report the Commission, in justification of its order, remarked (15 P.U.R.(N.S.) at p. 496): "Where public service companies are financially mismanaged, the general public suffers. Each additional security issue, each variation in the interest rate of security issues, each change in maturity date, has its effect upon the ability of the company to serve the public. We feel that the legislature has placed upon this Commission the duty to investigate all significant changes in the security structures of public service companies where such changes might adversely affect the public, and has conferred upon us the power to forbid changes

not in the public interest. In our opinion, a variation in the interest rate of a security constitutes an important change in that security, and a change which might well be fraught with danger to the public."

If the bondholders of appellant are willing to relieve it of a part of its interest burden, we are unable to perceive any possible danger to its patrons.

It may be that it would be proper and wise for the legislature to give the Commission jurisdiction over such contracts as are here involved. That is a question with which we have no concern. Our only duty is to determine whether it has done so. In performing that duty it must be kept in mind that the Commission does not have jurisdiction over all contracts of a public service company, or over its entire financial management. In order to justify an exercise of authority it must be able to point to language in the statute which, without being interpreted in a forced or strained sense, confers that authority upon it: Bell Teleph. Co. v. Public Service Commission (1935) 119 Pa. Super. Ct. 292, 11 P.U.R.(N.S.) 1, 181 Atl. 73; Swarthmore v. Public Service Commission, 277 Pa. 472, 478, P.U.R.1923E, 367, 121 Atl. 488.

In our opinion, a reduction in the interest rate of outstanding bonds, accomplished by the method here outlined by appellant, would not constitute the "issuing of securities" within the common and ordinary meaning of those words as used in § 4 of the amendatory act and the other sections to which reference has been made.

It is frankly stated by the Commission that no other case "with facts wholly analogous to those here involved" has come before it since the approval of the amendments. As we understand the cases cited as having some bearing upon the question, there was in each of them some additional feature, such as an extension of the date of maturity, or a different method of procedure. Until the legislature has conferred upon the Commission, in language more explicit than any to which our attention has been directed, the authority it seeks to exercise in this case we must hold that authority does not exist.

Order reversed and record remitted to the end that the rule may be discharged.

OREGON PUBLIC UTILITIES COMMISSIONER

Re Oregon-Washington Telephone Company

[U-F-704-T-49, P. U. C. Or. Order No. 3987.]

Depreciation, § 42 — Charges to reserve — Repairs.

1. Repairs, under the uniform system of accounts, will not be permitted to be charged to the depreciation reserve of a telephone company, p. 136.

Depreciation, § 16 — Depreciable fixed capital — Telephone station installations and drop and block wires.

2. Telephone station installations and drop and block wires, under the system of accounts prescribed for telephone companies, are classified as non-depreciable property, p. 136.

Depreciation, § 26 — Expense related to actual depreciation.

3. The utility's stockholders or ratepayers are injured unless proper depreciation rates are used so that the depreciation reserve balance approximates very closely the actual depreciation existing in the property, p. 136.

Apportionment, § 3 — Depreciation reserve — Primary accounts.

4. Segregation of a telephone company's depreciation reserve balance into primary accounts by prorating the reserve balance on the ratio that the depreciable fixed capital primary accounts bear to the total depreciable fixed capital, and then charging or crediting actual debits and credits to the depreciation reserve by primary accounts, is an incorrect method, since it assumes that the property in each primary account is of the same average age and has depreciated to the same extent; any breakdown of a depreciation reserve balance into primary accounts requires an analysis of the debits and credits to the reserve account and an assignment thereof to the various primary accounts, p. 137.

Depreciation, § 26 — Annual allowance — Effect of excessive reserve.

5. The depreciation rate for the future should be less than it would otherwise be when the existing reserve balance is excessive, in order that the reserve balance may be reduced so that it will more closely approach the actual depreciation existing in the property, p. 138.

Depreciation, § 26 — Annual allowance — Relation to accrued depreciation.

6. A company cannot logically expect to recover depreciation on its property on the basis of straight-line depreciation and at the same time claim some other method totally inconsistent therewith as a basis of determining accrued depreciation in a rate and valuation proceeding, since by this means it would obtain from the ratepayers a capital contribution upon which it would be entitled to a return, p. 138.

Depreciation, § 16 — Depreciable property — Right of way.

7. Classification of a right-of-way account as a depreciable fixed capital account is based upon the premise that the right of way included therein has a limited term life, and further accruals to such an account which is already large should be halted until such time as the company is able definitely to show what limited term rights of way are included therein, p. 139.

[January 14, 1937.]

INVESTIGATION *on Commissioner's own motion of rates, charges, methods, procedure, rules, and regulations with respect to the account for depreciation and the establishment of a reserve therefor by telephone utilities; depreciation rates established for a telephone company.*

WALLACE, Commissioner: This matter was instituted on November 2, 1935, on the Commissioner's own motion by the entry of P. U. C. Ore-

gon Order No. 3010. Said order was issued in accordance with § 61–217, Oregon Code Anno., which provides as follows:

"Depreciation Account — Purposes for Which Expended. Every public utility shall carry a proper and adequate depreciation account whenever the Commission after investigation shall determine that such depreciation account can be reasonably required. The Commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. The rates shall be such as will provide the amounts required over and above the expenses of maintenance, to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the Commission. The Commission may make changes in such rates of depreciation from time to time as it may find to be necessary.

"The Commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. . . .

"All moneys thus provided for shall be set aside out of the earnings and carried in a depreciation fund. The moneys in this fund may be expended in replacements, new construction, extensions, or additions to the property of such public utility, or invested, and if invested the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this section and for depreciation."

Said order provided "that all Class A and Class B telephone companies conducting an intrastate business in this state . . . file with the Commissioner not later than February 1, 1936, a schedule of depreciation rates . . . for property located within the state of Oregon which they propose to apply and place upon their books for the year 1936, together with such supplemental data as will make the submittal made to the Commissioner in I. C. C. Docket No. 14700 (177 Inters. Com. Rep. 351) applicable to the year 1936."

Pursuant thereto the Oregon-Washington Telephone Company duly filed a schedule of depreciation rates which it proposed to apply and place upon its books for the year 1936. The said schedule of depreciation rates was examined and investigated, and the Commissioner being of the opinion that additional information might be obtained through testimony of witness, set the matter down for hearing. Pursuant to Order No. 3885 entered on the 7th day of December, 1936, the hearing was held on December 17, 1936, at the office of the Commissioner in Salem, Oregon, at the hour of 10 o'clock A. M. before Examiners T. O. Russell and Melwood W. Van Scoyoc, at which time and place the following appearance was entered: Minor Corman, Hood River, President, appearing for Oregon-Washington Telephone Company.

The Interstate Commerce Commission under the provisions of the 1920 amendments to its act commenced a proceeding docketed as No. 14700 for

the purpose of determining proper depreciation rates for telephone companies.

Under its order of July 20, 1931, entered in said proceeding, certain depreciation schedules and supporting information were to be filed with state Commissions as well as with the Interstate Commerce Commission. Pursuant thereto the Oregon-Washington Telephone Company filed such a schedule on July 25, 1934. Subsequently, the Communications Act of 1934 became effective and Federal regulation of telephone companies was placed in the hands of the Federal Communications Commission. Further proceedings in Docket No. 14700 were indefinitely postponed by order of the Federal Communications Commission. No recommendations were made by the Commissioner to either the Interstate Commerce Commission or the Federal Communications Commission with respect to rates of depreciation of the Oregon-Washington Telephone Company.

The Oregon-Washington Telephone Company was organized July 18, 1907, and operates in both the states of Oregon and Washington. Its Oregon operations are restricted to the exchange system at Hood River and the territory immediately adjacent thereto.

The depreciation reserve of the company appears to have been segregated between states in the year 1918 and thereafter the annual balances thereof and the debits and credits thereto are available for the Oregon property. They are as follows: [Table omitted].

[1] Included in the "Debits" in the above tabulation is an aggregate amount of $64,608.27, representing "Repairs Charged to Reserve." The practice of charging to the depreciation reserve a portion of the maintenance expense was discontinued by the company in the year 1933. Under the Uniform System of Accounts adopted, effective January 1, 1937, "repairs" will not be permitted to be charged to the depreciation reserve. This in and of itself will have a very considerable effect upon the future rates of depreciation.

In the tabulation set forth below there are shown for each of the years 1917 to 1935, inclusive: (1) The book cost of the Oregon depreciable fixed capital; (2) the balances in the depreciation reserve for Oregon; (3) the per cent relationship of the depreciation reserve balances to said book cost of depreciable fixed capital. [Table omitted.]

The balances as shown for the years 1931 to 1935, inclusive, are subject to revision for the reason that the heretofore mentioned adjustments made during said years on account of the telephone instruments carried in the materials and supplies accounts were incorrect and resulted in an excessive credit to the depreciation reserve of approximately $13,000. If this correction be made (the company corrected its books for same during the year 1936) the per cent relationships for the years 1931 to 1935, inclusive, would be as follows:

1931	27.09%
1932	30.15%
1933	33.95%
1934	35.92%
1935	39.28%

[2, 3] Included in the above tabulation of the depreciable fixed capital are the accounts for station installa-

tions and drop and block wires. Under the system of accounts prescribed by the Commissioner such items are classified as nondepreciable property. These two accounts aggregate $10,275.71 as of December 31, 1935, and if said amount be deducted from the total depreciable fixed capital as of said date the per cent relationship for the year 1935 becomes 41.28 per cent. Mr. Corman testified that in his opinion the per cent condition of the Oregon property is somewhere between 78 per cent and 80 per cent and no relationship existed between the book depreciation of the property and the actual condition thereof. This contention is familiar to the Commissioner. There are, of course, instances where the amount collected for depreciation has been insufficient, and other instances where the amount collected from the ratepayers for depreciation has been excessive. In neither of these cases will the balance in the depreciation reserve on the company's books equal the accrued depreciation existing in the property.

If proper depreciation rates are used the depreciation reserve balance should approximate very closely the actual depreciation existing in the property, and unless it does so, the utility's stockholders or ratepayers are being injured. In the present instance we feel that too much has been collected from the ratepayers for depreciation in past years.

[4] In 1933 the company segregated its depreciation reserve balance for the Oregon property into primary accounts by prorating the reserve balance on the ratio that the depreciable fixed capital primary accounts bore to the total depreciable fixed capital. Since that time the actual debits and credits have been charged or credited to the depreciation reserve by primary accounts. Obviously, the method used by the company was incorrect, for it assumed that the property in each primary account was of the same average age and had depreciated to the same extent. Any breakdown of a depreciation reserve balance into primary accounts will require an analysis of the debits and credits to the reserve account and an assignment thereof to the various primary accounts. The Commissioner must, therefore, disregard the reserve balances by primary accounts as set forth on Exhibit I herein and consider only the total reserve balance as adjusted.

The rates of depreciation which the said Oregon-Washington Telephone Company proposes to apply for the year 1936 to its Oregon property are as follows:

Account No.	Plant Accounts	Rate of Depreciation Per Cent
201	Organization	..
207	Right of way	4.0
210	Land and buildings	
211	Land	..
212	Buildings	2.1
220	Central office equipment	
221	Central office equipment	4.65
231	Station apparatus	6.0
232	Station installations	..
234	Private branch exchange	5.625
235	Booths	5.0
241	Exchange pole lines	6.0
242	Exchange cable	4.5
243	Exchange aerial wire	
243	Exchange aerial wire	5.5
233	Drop and block wire	..
244	Exchange underground conduit	2.0
251	Toll pole lines	5.25
253	Toll aerial wire	4.5
256	Toll submarine cable	4.9
260	General equipment	
261	Furniture and fixtures	6.0
264	Vehicles and other work equipment	16.75
	Composite rate	4.58

These rates produce an amount chargeable to operating expense for the year 1936 of $10,310.50. The composite rates of depreciation which the company has used in past years, together with the actual accruals in dollars charged to operating expenses, are shown in the tabulation here below:

Year	Annual Depreciation Charge	Composite Rate on Depreciable Fixed Capital
1918	$4,553.38	2.88
1919	4,396.12	2.69
1920	8,421.84	4.97
1921	7,572.00	4.36
1922	4,869.92	2.74
1923	5,020.00	2.74
1924	8,452.00	4.58
1925	8,460.00	4.56
1926	8,472.00	4.37
1927	9,000.00	4.44
1928	9,351.00	4.38
1929	9,696.00	4.50
1930	10,563.53	4.84
1931	10,983.02	5.03
1932	10,942.19	5.07
1933	12,285.23	5.84
1934	11,822.94	5.60
1935	10,529.41	4.97

The above rates of depreciation, as well as the rates proposed for the year 1936, are based upon "straight-line depreciation."

[5, 6] The Commissioner's accounting staff produced an exhibit (No. 3 herein) showing that the composite rate of depreciation for the year 1936 should be 3.33 per cent of the depreciable fixed capital. This rate was based upon a study of the company's actual experience using the "turn over method" of determining depreciation rates wherever possible. This study, while taking into consideration that the company's experience showed its past rates to have been excessive, did not give any consideration to the correction of the excessive depreciation reserve which has now accumulated. It was stated that if the excessive reserve were to be reduced the rate of depreciation for the future should be less than 3.33 per cent. The Commissioner is of the opinion that the excessive reserve balance should be reduced so that it more closely approaches the actual depreciation existing in the property.

It was stated by Mr. Corman that the retirement of the central office equipment in the Hood River exchange is imminent and would take place within the next few years. A large portion of such equipment is now twenty-three years old. Such retirement will result in a considerable decrease in the depreciation reserve balance and it was contended that the present accrual should be continued to care for such retirement. It should be pointed out that when such a replacement is made the depreciation existing in the property will likewise be considerably decreased, due to the addition of new property to the exchange system at 100 per cent condition. In the face of his testimony that the retirement of the central office equipment at Hood River is imminent and would take place in the next few years, Mr. Corman stated that the per cent condition thereof at present was 90 per cent and that such per cent condition would be claimed by the company in a rate proceeding.

The company's position appears illogical. How can it expect to recover depreciation on its property from its ratepayers on the basis of "straight-line depreciation" and at the same time claim some other method totally inconsistent therewith as a

basis of determining accrued depreciation in a rate and valuation proceeding? If it is successful in such a position, it will have obtained from the ratepayers a capital contribution upon which it will be entitled to a return. See Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 U. S. 151, 78 L. ed. 1182, 3 P.U.R.(N.S.) 337, 54 S. Ct. 658.

[7] The company has included in its depreciation rates a rate of 4 per cent per annum on its Right-of-way account, which rate is based upon an estimated life of twenty-five years. The company was unable to show what right of way it held in Oregon, and whether the amount included in the said Right-of-way account represented limited term or perpetual rights of way. No additions or retirements have been made to this account since 1919. While this account is ordinarily classified as a depreciable fixed capital account, such classification is based upon the premise that the right of way included therein has a limited-term life. In view of the large amount already accrued on this account, it is the opinion of the Commissioner that further accruals thereon should be halted until such time as the company is able to definitely show what limited-term rights of way are included therein.

The Commissioner is confronted in this proceeding with the problem of determining proper and adequate rates of depreciation in accordance with the provisions of § 61–217, Oregon Code 1930, hereinbefore set forth. The rates of depreciation which the utility has used in past years, and the rate proposed herein for the year 1936, are unquestionably in excess of proper and adequate rates. The Commissioner's accounting staff, as heretofore stated, concluded that a depreciation rate of 3.33 per cent of the depreciable fixed capital would be sufficient to care for accruing depreciation in the Oregon property. This rate did not take into consideration correction of the excessive reserve balance which has now accumulated.

As heretofore stated, the effect of the change in the Uniform System of Accounts relating to "Repairs Charged to Reserve" is of much importance and must be given consideration in the fixing of future rates of depreciation.

It is obvious that if a correction is to be made of the excessive reserve balance, the rate of depreciation should be reduced below the rate of 3.33 per cent. Just how much requires the exercise of judgment? There is no formula which can be readily applied, and experience is the only test. In the judgment of the Commissioner, the rate of 2½ per cent of the depreciable fixed capital in Oregon will be sufficient for the year 1936.

Under the provisions of § 61–217, Oregon Code 1930, the Commissioner is given authority to make such changes in the rates of depreciation as may be found necessary, and it is the intention of the Commissioner to continue to supervise the depreciation rates of Oregon-Washington Telephone Company and to make whatever revisions in said rates as may be found necessary in order to prevent injury to either the company's ratepayers or its stockholders.

The Commissioner having consid-

ered the entire matter, the testimony offered at said hearing, and the files and records herein, does now, therefore, find and conclude as follows:

I

That the depreciation reserve of the Oregon-Washington Telephone Company for the state of Oregon is grossly excessive and is more than is required to take care of the actual depreciation existing in the property.

II

That the considerable difference now existing between the depreciation reserve and the actual depreciation of Oregon-Washington Telephone Company for the state of Oregon should be gradually reduced until said depreciation reserve approximates more closely the actual depreciation.

III

That the depreciation rate of 4.58 per cent of the Oregon depreciable fixed capital proposed by the said Oregon-Washington Telephone Company to be used during the year 1936 in accruing depreciation upon its books is in excess of the company's requirement for depreciation.

IV

That a depreciation rate of 2½ per cent of the Oregon depreciable fixed capital of Oregon-Washington Telephone Company would produce an amount sufficient to reasonably care for depreciation accruing during the year 1936 in the Oregon property of said company and prevent the further swelling of an already excessive depreciation reserve.

V

That the Oregon fixed capital account "Right of way" should not be considered as a depreciable account until such time as the company is able to show the ownership of right of way in Oregon and that such right of way is of limited-term life.

VI

That the Commissioner should reserve jurisdiction herein for the purpose of supervising the rates of depreciation of Oregon-Washington Telephone Company in the future, and in order to make whatever revisions therein as may be found necessary.

Now, therefore, based upon the foregoing, it is

Ordered that the Oregon-Washington Telephone Company accrue depreciation on its books for the year 1936 at the composite rate of 2½ per cent of its Oregon depreciable fixed capital (excluding right of way). It is further

Ordered that jurisdiction be expressly reserved herein by the Commissioner for the reasons hereinabove set forth.

MAINE SUPREME JUDICIAL COURT

Public Utilities Commission

v.

Saco River Telegraph & Telephone Company

(— Me. —, 189 Atl. 186.)

Appeal and review, § 8 — Decisions subject to review — Absence of orders.

Exceptions to findings and alleged rulings of the Commission must be dismissed when the Commission has made no order, since exceptions do not lie to what is nothing more than an expressed intention of the Commission to do something in the future; and the result is the same with respect to exceptions to the admission and exclusion of evidence.

[January 9, 1937.]

EXCEPTIONS *to findings of Public Utilities Commission; dismissed.*

Argued before Dunn, C. J., and Thaxter, Sturgis, Barnes, Hudson, and Manser, JJ.

APPEARANCES: Benjamin F. Cleaves, of Portland, for plaintiff; Hiram Willard, of Sanford, for defendant.

THAXTER, J.: The respondent, Saco River Telegraph & Telephone Company, purports to bring this case before this court on exceptions to certain findings and alleged rulings of the Public Utilities Commission.

The proceeding originated on a complaint filed by the Standish Telephone Company against the respondent, seeking to determine the ownership of certain poles and equipment used in furnishing telephone service in the towns of Buxton and Hollis, and to establish the respective rights of the two companies to supply telephone service to such towns. The Commission, not being satisfied that the matter was properly before it, entered a complaint on its own motion. The respondent filed an answer, in which was included by agreement what was in substance a cross-complaint.

Hearings were had before the Commission which made certain findings. These are to the effect that the Saco River Telegraph & Telephone Company had unlawfully extended its service to a certain portion of the area in question; that with respect to that part of the territory in which both companies have for some time operated, matters should for the present be left in statu quo, until the

ownership of certain of the facilities should be settled. The final paragraph of the findings reads as follows:

"In view of the foregoing conclusions we shall make no definite order herein at this time but the case will remain open on the Commission's docket for such further hearing and order as may be required."

The respondent excepted to the exclusion of certain evidence and to the admission of other evidence, also to the findings of the Commission. These exceptions were allowed.

The case is not properly before us. The Commission has made no order. It has suggested in its findings what order it may make under certain conditions. But exceptions do not lie to what is nothing more than an expressed intent to do something in the future. The case is still open on the Commission's docket. A somewhat analogous situation was presented in the case of Guthrie v. Mowry (1936) 134 Me. 256, 184 Atl. 895, where it was held that an appeal from a decree based on findings of the Industrial Accident Commission was premature when the record showed that the case had never been closed before the Commission.

The result is the same with respect to the exceptions to the admission and exclusion of evidence. Until an enforceable order is made, it is impossible for a party claiming to be aggrieved to show that the rulings excepted to are really prejudicial. The showing of prejudice is necessary, if exceptions to such rulings are to be sustained. Damariscotta-Newcastle Water Co. v. Damariscotta-Newcastle Water Co. (1936) 134 Me. —, 15 P.U.R.(N.S.) 498, 186 Atl. 799.

In any event, orderly procedure requires that, except under certain well-recognized conditions not here present, cases shall not be brought before the law court piecemeal.

Case dismissed.

WEST VIRGINIA PUBLIC SERVICE COMMISSION

Re Southeastern Gas & Water Company

[Case No. 2458.]

Rates, § 184 — Burden of proof — Transfer of production system.

1. A natural gas distributing utility applying for authority to increase rates has the burden of proof to show by competent evidence that a transfer of the gas wells and production system to a producing company owned by the distributing company, and from which the distributing company purchases gas, did not adversely affect its customers, p. 144.

Expenses, § 86 — Payment to affiliate — Natural gas cost — Affiliated companies.

2. The Commission cannot determine the reasonableness of a rate proposed to be charged by a natural gas distributing utility unless and until it is

advised as to the reasonableness of the price being paid to an affiliated company for gas supplied, p. 144.

[January 7, 1937.]

INVESTIGATION *and suspension of natural gas rates filed by distributing utility; rates canceled without prejudice.*

APPEARANCES: Koontz, Hurlbutt, and Revercomb, Charleston, for the Southeastern Gas and Water Company; Dale G. Casto, Charleston, for the towns of Danville and Madison, protestants.

By the COMMISSION: In the above-entitled proceeding the Commission entered upon an investigation concerning the reasonableness of the rate for furnishing natural gas in the towns of Danville and Madison, stated in a schedule or tariff issued by the Southeastern Gas and Water Company on May 29, 1936, to become effective July 1, 1936, and designated First Revision of Original Sheet No. 4 to its tariff, P. S. C. W. Va. No. 1, canceling Original Sheets Nos. 4 and 5 stating the rates then in effect.

The tariff so filed states a change in the rate for gas for domestic and commercial use from 25 cents per thousand cubic feet to 35 cents per thousand cubic feet, and cancels the rate of 20 cents per thousand cubic feet for industrial use, so that all gas sold would be at the rate of 35 cents per thousand cubic feet. The proposed rate has been suspended by proper orders and the use thereof deferred until April 27, 1937.

The burden of proving that the rate stated in the tariff is just and reasonable was upon the Southeastern Gas and Water Company, hereinafter referred to as the respondent, and it offered evidence for that purpose.

On July 1, 1929, the Boone County Utilities Company, the respondent's predecessor, acquired, through purchase, the assets of the Shields Oil and Gas Company, which assets included eight or nine gas wells, the leased acreage in which the wells were drilled, the field and transmission lines used in gathering and transporting the gas from the wells to the place of consumption, the meters, regulators, and all other equipment used by the Shields Oil and Gas Company in its business of transporting and distributing gas to its customers.

The Boone County Utilities Company, shortly after taking over the business of the Shields Oil and Gas Company, divorced its production and transmission system from its distribution system by selling its wells, field lines, transmission lines, meters, regulators, and other production equipment to an affiliated company, the Southeastern Gas Company. Since that time, it has purchased all the gas it sells from the Southeastern Gas Company at a price beginning with 12 cents in 1929 and increased from time to time until it reached 17 cents in 1935.

On October 23, 1935, the Boone County Utilities Company filed with the Commission a petition for consent and approval to the transfer by it of all of its property, assets, business, and

franchises to the Southeastern Gas and Water Company, which consent and approval was given by an order of the Commission entered November 16, 1935.

Respondent's Exhibit No. 3 shows that its total operating expenses, including taxes and management fee, for the 12-month period beginning July 1, 1935, and ending June 30, 1936, were $21,464.12, and $13,056.85 of this amount, or over 60 per cent of the total operating expenses, represented payments to the Southeastern Gas Company for gas purchased.

[1, 2] It appears at page 379 of the transcript of the reporter's notes taken at a hearing held on July 24, 1935, that the Commission indicated to the respondent that its predecessor, the Boone County Utilities Company, having divorced its production system from its distribution system, the burden was upon it, since it was also the owner of the stock of the producing company, to show, by competent evidence, that such divorcement did not adversely affect its customers in the towns of Danville and Madison.

It is developed in the record that the Southeastern Gas Company owns a number of wells in addition to those purchased from the Boone County Utilities Company, and that it is selling gas produced by its wells generally to the Clayco Gas Company in wholesale quantities at 14 cents per thousand cubic feet. It is also developed in the record that the Southeastern Gas Company is selling gas produced by two of its wells located near the town of Madison to the Libby-Owens Glass Company at 12 cents per thousand cubic feet, but does not show whether or not these two wells were included in those sold by the Boone County Utilities Company to the Southeastern Gas Company.

A further hearing was held in this proceeding on September 21, 1936. However, the respondent made no attempt to show the cost of gas produced from the wells purchased by the Boone County Utilities Company from the Shields Oil and Gas Company and transferred to the Southeastern Gas Company.

We are of the opinion that this case falls within the rule laid down by this Commission in Re Point Pleasant Nat. Gas Co. and cases cited therein, 2 W. V. P. S. C. Decisions, 455, 14 Ann. Rep. W. V. P. S. C. 190, P.U.R. 1927B, 805. Having so concluded, it would serve no useful purpose at this time to consider the evidence of record respecting the respondent's revenues and operating expenses or the value of its property, except to point out that, although the Shields Oil and Gas Company kept accounting records and made annual reports to this Commission, the Boone County Utilities Company failed to take over these accounting records as required by the rules of this Commission. Account No. 102 of the Uniform Classification of Accounts prescribed by this Commission for natural gas utilities and in effect at the time the property was purchased, reads in part as follows:

"In connection with the purchase of property chargeable to this account the utility shall procure all existing records, memoranda, and books of accounts in the possession or control of the grantor relating to the construction and improvement of such property and shall preserve such records,

memoranda, and books of accounts until authorized by the Public Service Commission to destroy or otherwise dispose of them. If it is impracticable to transfer such records, memoranda, and books of accounts, the utility shall procure copies of them certified by the custodian of the originals."

It would seem that a further effort should be made by the respondent to locate the accounting records of the Shields Oil and Gas Company and we suggest that this be done.

After a careful consideration of the record, the Commission is of the opinion and finds that the respondent, being the successor of the Boone County Utilities Company and the owner of all of the stock of the Southeastern Gas Company, has the burden, under our statute, of showing, by competent evidence, that the transfer of the wells and other production property to the Southeastern Gas Company by the Boone County Utilities Company and which was a part of the assets acquired by it from the Shields Oil and Gas Company, did not adversely affect the respondent's customers in the towns of Danville and Madison; that the respondent has failed to carry this burden; that it is not possible for the Commission, from the record, to determine the reasonableness of the rate proposed to be charged by the respondent unless and until it is advised as to the reasonableness of the price of 17 cents per thousand cubic feet now being paid for it for gas furnished by the Southeastern Gas Company; and, therefore, the respondent's tariff, designated First Revision of Original Sheet No. 4 to its tariff, P. S. C. W. Va. No. 1, canceling Original Sheets Nos. 4 and 5, should be canceled and stricken from the tariff files of the Commission, without prejudice, however, to the reopening of this proceeding, at the request of the respondent, without further pleading, for the purpose of giving it an opportunity, if it so desires, to offer additional testimony in support of the rate it proposes to put into effect.

An order may be entered accordingly.

MISSOURI PUBLIC SERVICE COMMISSION

Public Service Commission

v.

Springfield Gas & Electric Company et al.

[Case No. 9067.]

Valuation, § 192 — Property included — Expenditure for new busses.

1. A public utility company which is authorized to acquire the properties of a traction company, and after such acquisition to abandon street railway service and substitute trolley coach and bus service, is entitled to a legal rate of return on an additional capital expenditure for new busses, p. 148.

Return, § 83 — Electric and bus utility.

2. A return of 6½ per cent, rather than 7 per cent as requested, was allowed on the used and useful property of a gas and electric company acquiring the properties of a traction company and substituting trolley coach and bus service in lieu of street railway service, p. 148.

Expenses, § 27 — Cost of valuation — Amortization.

3. A public utility company acquiring street railway properties and substituting trolley coach and bus service in lieu of street car service was permitted to amortize over a period of five years the cost of the valuation proceeding, p. 148.

Expenses, § 114 — Federal income tax.

4. Federal corporate income taxes should be deducted from gross revenues or allowed as operating expense in calculating the proper return of a public utility company, p. 149.

Expenses, § 2 — Powers of Commission — Effect of contract.

5. The power of amortization is vested solely within the Commission, and it is beyond the power of a public utility company and a municipality by stipulation or otherwise to enter into any agreement concerning amortization that would be binding upon the regulatory body, p. 149.

Expenses, § 37 — Amortization of loss — Combined utilities.

6. A public utility company authorized by the Commission to acquire traction property as part of a plan for substitution of busses for street cars was permitted, in view of the public interest in the transportation system and acquiescence by municipal authorities, to amortize out of a common fund or the fund received from all of the utility service a part of the losses incurred by reason of the change from street railway to busses to handle the mass transportation, notwithstanding the principle that as a general rule it is inequitable and unjust that the users of one class of utility service pay a higher rate in order to support another utility, p. 149.

Depreciation, § 42 — Charges to reserve — Bad investments.

7. A depreciation reserve account should not be used for any purpose except that for which the reserve was created, and no part of a loss on securities should be charged to such reserve, p. 150.

[January 6, 1937.]

REHEARING *on investigation of rates and proposed agreement relating to financial matters and to substitution of motor carrier service for street car service; modified order entered. For original decision, see 16 P.U.R.(N.S.) 267.*

ANDERSON, Commissioner: This matter is before the Commission on a motion for rehearing filed by the Springfield Gas & Electric Company and the Springfield Traction Company on November 12, 1936, asking for a rehearing on a report and order issued by the Commission on October 23, 1936 (16 P.U.R.(N.S.) 267).

The motion for rehearing was accompanied by a proposed modified plan, setting out in detail features in

which the movants averred the Commission in its report and order had erred.

An argument was held on the motion for rehearing before four members of the Commission at its hearing room at Jefferson City, Missouri, on December 21, 1936, after the interested parties had been notified. The movants, the Springfield Gas & Electric Company and the Springfield Traction Company, and the Utility Rate Payers Association were represented by counsel; the Taxpayers Conservation League was represented by its agent, M. D. Lightfoot; and the Public Service Commission was represented by members of its engineering and accounting departments.

The argument and evidence offered in support of the motion for rehearing were to the effect that the Commission in its report and order issued on October 23, 1936, *supra*, had committed error in that it found an excessive rate of return in the amount of $215,011 earned by the Springfield Gas & Electric Company; also that the Commission had failed to take into consideration the rate of return upon the additional capital expenditure of $100,000 for the purchase of new busses; that the amount of $20,000, the prospective annual deficit for the operation of the busses, should have been charged to operating expenses instead of to depreciation reserve; and that the Commission erred in allowing the Springfield Gas & Electric Company to amortize only $113,160 of the open account of $457,810.18 owed by the Springfield Traction Company to the Springfield Gas & Electric Company, inasmuch as the Springfield Gas & Electric Company was allowing a credit of $149,400, which amount was to be deducted from the open account, the same being the value of the portion of the physical properties of the Springfield Traction Company which would be used and useful in the substituted bus service, therefore leaving a balance of $308,410.18 of the open account, which amount the Springfield Gas & Electric Company claims was earned by the Springfield Traction Company with the exception of approximately $78,000. The Springfield Gas & Electric Company states that the Commission should not have deducted the sum of $195,250 from that account, the same being interest on the first mortgage 5 per cent bonds and interest on the income mortgage 5 per cent bonds.

There was no objection to the phase of the Commission's report and order pertaining to the writing down of the value of the Springfield Traction Company securities owned by the Springfield Gas & Electric Company, in the amount of $852,925.23, which amount was charged to the capital surplus account. Of the remaining balance of the securities account, $467,075.07, the Commission authorized $165,811.86 to be charged to the accumulated earnings surplus, the balance of that account to be borne by the Springfield Gas & Electric Company.

In the Commission's report and order the open account and the proposed plan of agreement were set out in detail.

Another feature presented by the movants was that there were additional Federal taxes in the amount of $8,722, which should be allowed; also

that the cost of the valuation proceeding, approximately $80,000, should be amortized over a period of five years, or an annual amortization of $16,000, and charged to operating expenses.

The Commission in its former report and order allowed $85,000 annually as a depreciation reserve. The company at this time maintains that the depreciation reserve annually should be 3 per cent of the tentative value depreciated as found by the Commission in its former report and order, which was in the amount of $3,289,796, or approximately the amount of $100,000 annually.

The gross operating revenues for the year 1935, as shown by the company's 32nd annual report, were $1,154,308.80. The operating expenses for that period, as shown by said annual report, including taxes, with the exception of the Federal taxes heretofore mentioned, were $809,145.87.

The tentative value depreciated of $3,289,796 does not include the additional expenditure of $100,000 for new busses, which was the tentative value depreciated used by the Commission in its former report and order in this matter.

The company maintains it is entitled to a 7 per cent rate of return on the used and useful property.

For the Commission to properly dispose of the motion for rehearing in this cause of action it is necessary for it to consider the additional features that were argued by the attorneys for the movants, the Springfield Gas & Electric Company and the Springfield Traction Company, and as were shown by the evidence adduced in behalf of those companies.

[1, 2] The Commission in its former report and order authorized the Springfield Gas & Electric Company to acquire the properties of the Springfield Traction Company, and after the acquisition of the same to abandon the present electric street railway service and substitute trolley coach and bus service in lieu thereof This would require an additional capital expenditure of approximately $100,000 for new busses, on which amount the company would be entitled to a legal rate of return. The depreciated value as shown by the evidence in this cause is $3,289,796. While the movant companies feel they are entitled to a 7 per cent rate of return, the Commission is of the opinion that a 6½ per cent rate of return would be a fair rate of return on the used and useful property—or, in substance, a 6½ per cent rate of return on the depreciated value, which would not include the additional capital expenditures, would be $213,836. The company should also be required to set up a depreciation reserve or depreciation annuity of $90,000 annually, or there should be available for the return and depreciation reserve the amount of $303,836, which amount does not include a rate of return on the additional capital expenditure for the busses. With that amount included the amount that should be available for the depreciation and return would be $310,336.

[3] The movant company should also be authorized to amortize out the cost of the valuation proceeding, which cost totals at the present time approximately $80,000. This should be amortized out over a period of five years, or $16,000 annually.

The Commission feels that the amortization of the portion of the open account as set out in its former report and order is proper. In said report and order the Springfield Gas & Electric Company was authorized to amortize over a period of ten years the amount of $113,160, the amount having been ascertained by subtracting the amount of the used and useful property of the Traction Company, $149,400, and the amount of $195,250, the interest due on the first mortgage 5 per cent bonds and the interest on the income mortgage 5 per cent bonds, from the amount of the open account, which was $457,810.18. This open account is an account owed by the Springfield Traction Company to the Springfield Gas & Electric Company.

[4] Concerning the item of $8,722, additional Federal corporate income taxes, it is conclusive that the same should be charged as operating expenses, Galveston Electric Co. v. Galveston, 258 U. S. 388, 66 L. ed. 678, P.U.R.1922D, 159, 42 S. Ct. 351, as there is no distinction between state and Federal taxes or between income taxes and others. In calculating the proper return Federal corporate income taxes should be deducted from the gross revenues or allowed as operating expenses.

[5, 6] Under the original agreement and the modified plan of agreement entered into between the Springfield Gas & Electric Company and the City of Springfield there was a provision to the effect that the Springfield Gas & Electric Company be permitted to amortize out annually, and allow the same as operating expenses, the losses incurred by reason of the change from street railway to busses to handle the mass transportation in an amount not to exceed annually $20,000. It is conclusive that the power of amortization is vested solely within this Commission, and it is beyond the power of the movant companies and the city of Springfield by stipulation or otherwise to enter into any agreement concerning the same which could be binding upon this regulatory body. If it were true that the city and movant companies could by stipulation or otherwise control the amortization it would mean that the nadir of regulation had been reached. The polar star by which this Commission must be guided is public interest and public welfare, and since there is a public demand for mass transportation in the city of Springfield and since the proposed change will result in improved service and since it is admitted that the transportation system is being operated at a loss it necessarily follows that the Commission should consider what effect, if any, there would be to the public interest as the result of the substituted transportation service proposed by the movant companies. As an eminent principle of regulation each utility should be required to stand upon its own merits, and therefore a regulatory body should not permit one class of patrons or customers to pay in portion or part for the services rendered to another class of patrons or customers. The Commission as a regulatory body should not authorize a utility to favor one class of utility users or patrons over another, which as a general rule would be inequitable and unjust; in the instant case such action would be discriminatory, favoring the street car

users or transportation patrons. However, in the case at bar, since the public welfare in the city of Springfield seems to warrant the action as to the substituted service, the city having agreed to the same, and since the losses resulting on account of said substituted service may be amortized out of a common fund or the fund received by the movant companies from all of the utility service of the Springfield Gas & Electric Company and the Springfield Traction Company without materially affecting the electric, heating, or gas rates the Commission is inclined to look upon same with favor and will grant the amortization, in part, of the losses as heretofore set out and requested by the movant companies and the city of Springfield, but in the event the rates of the electric users or the users of the heating service become burdensome or unreasonable such situations can be relieved by appropriate proceedings.

[7] Another feature the Commission should consider is the purchase by the Springfield Gas & Electric Company of the securities of the Springfield Traction Company in the amount of $1,320,000, as under the proposed agreement and the modified plan the Springfield Gas & Electric Company proposes to eliminate this account by charging $852,925.23 of that loss on the traction company's securities to the capital surplus account, and the balance of $467,075.77 to the depreciation reserve account, thereby eliminating the bad investment of the traction company's securities in the amount as heretofore stated. We see no objection to charging a portion of that loss, $852,925.23, to the capital surplus account, but the application of the remaining balance to the depreciation reserve or retirement reserve, which depreciation reserve would be directed by this Commission by the issuance of a report and order authorizing said retirement reserve would be fundamentally wrong, as the retirement reserve should only be used by a public utility as designated by Rule 251 of the Uniform System of Accounts for Electric Utilities as promulgated by the Commission effective January 1, 1932, and therefore the depreciation reserve account should not be used for any other purpose except that for which the reserve was created. We feel that it would be permissible to charge a portion of the $467,075.77 to another account of the movant company, which is accumulated earnings surplus, which on December 13, 1935, was shown to be $165,811.86.

From the conclusions heretofore reached it necessarily follows that the motion for rehearing filed on behalf of the movant companies, the Springfield Gas & Electric Company and the Springfield Traction Company, should be sustained in part in so far as the Springfield Gas & Electric Company will be permitted and authorized to amortize out the cost of the valuation proceeding over a period of five years; also authorized to charge to operating expenses the losses incurred by the substituted service of busses and trolley coaches for the present street railway system in an amount not exceeding $20,000 annually; also authorized to charge to operating expenses the additional Federal corporate income tax, and to charge certain items to the surplus account and accumulated earnings surplus of the Spring-

field Gas & Electric Company; also a provision for the substituted bus service and trolley coach service for the present street railway system which the Commission in the instant case deems permissible and advisable.

The order issued by the Commission on the 23rd day of October, 1936, *supra,* will be and the same is hereby set aside and held for naught.

An order expressing the views as heretofore set out will accordingly be so issued.

Hargus, Chairman, Boyer, Nortoni, and Ferguson, Commissioners, concur.

ORDER

A report having been filed on this date,

It is, therefore,

Ordered: 1. The motion for rehearing by the Springfield Gas & Electric Company and the Springfield Traction Company filed with the Commission on November 12, 1936, is approved to the extent hereinafter set out.

Ordered: 2. That the Springfield Gas & Electric Company is hereby directed to reduce its electric rates in the amount of $178,788.93. It is authorized to file a new schedule of rates authorizing said reduction on or before January 15, 1937, to become effective February 1, 1937.

Ordered: 3. That the Springfield Gas & Electric Company is hereby authorized to acquire the physical properties of the Springfield Traction Company used and useful for the bus operations at the value of $149,400; also, authorized to discontinue street car service and abandon operation of the street car tracks and to operate trolley coaches and motor coaches in lieu thereof.

Ordered: 4. That the Springfield Gas & Electric Company is hereby authorized to spend $100,000 for the purchase of new busses, and the expenditure therefor to be treated as capital expenditure.

Ordered: 5. That the Springfield Gas & Electric Company is hereby authorized to charge the actual deficit annually in the operation of the transportation company to operating expenses, provided there is a deficit created by said operation, but the amount shall not exceed $20,000 annually.

Ordered: 6. Until further orders of the Commission are received the Springfield Gas & Electric Company is hereby authorized to make an annual charge to operating expenses in the sum of $11,316 to apply on the amortization as herein provided for.

Ordered: 7. That the Springfield Gas & Electric Company is hereby authorized to charge to operating expenses over a period of five years the cost of the valuation proceeding and to amortize the same out annually not to exceed an amount of $16,000 per year.

Ordered: 8. That the Springfield Gas & Electric Company is hereby authorized to charge off or eliminate a part of the account of the stocks and securities of the Springfield Traction Company in the amount of $852,-925.23 by charging the same to surplus account; it shall also be authorized to charge off to the accumulated earnings surplus the amount of $165,-811.86 of the account of the stocks and securities of the Springfield Traction Company.

Ordered: 9. That the Springfield Gas & Electric Company is hereby directed to set aside each year from the operating revenues of that company the sum of $90,000 annually plus 3 per cent of the additions and betterments to the said electric and transportation properties as a depreciation or retirement reserve fund; all net additions and betterments to be considered after the date of the completion of the inventory and appraisal in this case.

Ordered: 10. That the Springfield Gas & Electric Company shall keep separate, true, and accurate accounts showing the used and useful property it acquires from the Springfield Traction Company to be used in the operation of the busses and trolley coaches. At the end of six months from the effective date of this order the company shall make a verified report to the Commission showing the used and useful property acquired from the Springfield Traction Company for the bus services. Accounts, vouchers, and records shall be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

Ordered: 11. That the Commission shall retain jurisdiction of this proceeding for the purpose of making future orders as to the value of the properties involved, and to make future orders in conformity to the principles expressed herein and as the facts may hereafter warrant.

Ordered: 12. That this order shall become effective ten days from this date, and that the secretary of this Commission shall serve certified copies of this report and order upon all interested parties, and said interested parties shall notify the Commission before the effective date of this order in the manner prescribed by § 5145 of the Rev. Stats. of Missouri, 1929, as to whether the terms of this order are accepted and will be obeyed.

WISCONSIN PUBLIC SERVICE COMMISSION

J. H. Bartz et al.

v.

Wisconsin Public Service Corporation

[2-U-1065.]

Certificates of convenience and necessity, § 11 — Commission jurisdiction — Effect of general order — Rural extensions.

1. The Commission has authority to require, in its discretion, that a public utility secure Commission authorization for an electric extension even though it be exempt under General Order 2–U–965, in view of the Commission's general jurisdiction over extensions and statutory provisions as to compliance with any applicable general *or special order* of the Commission, p. 154.

Franchises, § 61 — Indeterminate permits — Nonexistence in towns.

2. No exclusive franchises or indeterminate permits exist in rural towns for public utilities under existing statutes and court decisions, p. 157.

[December 28, 1936.]

COMPLAINT *against proposed extension by electric utility company; complaint dismissed.*

By the COMMISSION: The issue presented to the Commission for decision in this docket is whether the Commission can and should assume jurisdiction over a proposed extension of 2.9 miles of rural electric line by Wisconsin Public Service Corporation in the town of How, Oconto county, even though such extension qualifies under General Order 2–U–965 (15 P.U.R.(N.S.) 364) as an exempt rural line extension for which the public utility need not secure Commission authorization prior to construction.

By a complaint received December 10th, the How town board and twenty-eight other petitioners made various allegations and asked the Commission to cancel the corporation's "indeterminate contract" in the town of How "as far as they have no lines at present so that the town board is at liberty to turn the unoccupied territory over to the Northeastern Electric Coöperative" and to enjoin Wisconsin Public Service Corporation "to cease all extension work in the town of How until this issue has been settled."

This complaint was filed under provisions of § 196.26, Wisconsin Statutes, which calls for twenty days' notice of investigation and hearing. All parties, however, waived their rights to such notice, and hearing was held at Oconto on December 22nd upon notice issued December 14th. Appearances were:

Petitioners, consisting of How Town Board, Oconto County, and twenty-eight others, by Michael F. Kresky and Meyer Cohen, Green Bay, Attorneys, and J. H. Bartz, Town Chairman; Northeastern Electric Coöperative, by Kresky and Cohen, the Reverend Otto W. Schreiber, Suring, President, and J. I. Etheridge, Oconto County Agricultural Agent; Rural Electrification Coördination, by Curtis Siegel, Madison, Senior Clerk; Wisconsin Public Service Corporation, by Walter Bie, Green Bay, Attorney, and A. J. Goedjen, Green Bay, Division Superintendent.

At this hearing the opening statement of petitioners' counsel revealed that the cause of the complaint was solicitation of customers in the town of How by the corporation and a proposal to build an extension of existing rural electric lines in the town 2.9 miles long without application to or authority from the Commission under an exemption provided in Rule 1, General Order 2–U–965 (p. 15, August 27, 1936, revision).

Petitioners' counsel, while pointing out that data on the proposed extension has come to the petitioners only informally, does not contend that the proposed line is more than 2.9 miles long nor that it is not properly exempt under provisions of Rule 1, General Order 2–U–965. Counsel asks rather that the Commission investigate

whether the line was not deliberately made one tenth of a mile less than 3 miles in order to qualify for exemption and that the Commission take jurisdiction over the proposed extension, despite its exempt status, in view of coöperative developments in the town of How (Transcript, pp. 3–5).

The corporation preserved its rights as to the Commission's jurisdiction (p. 8) but submitted testimony of precisely the scope and character that would ordinarily be presented upon hearing provided for in General Order 2–U–965 in the case of a proposed rural electric line extension to which objection has been raised by the Rural Electrification Coördination Director or other interested party and over which Commission jurisdiction has been assumed. Testimony of the scope and kind ordinarily presented in opposition to a proposed extension was submitted by the petitioners.

The Commission therefore has before it (1) the jurisdictional question, and (2) if jurisdiction is taken, the necessary facts upon which to make findings as to whether authority for the proposed extension should be granted or denied. Obviously, if jurisdiction is not taken in the matter, the question of granting or denying authority need not be considered. As a practical matter, however, the two issues may not easily be separated for decision since the facts submitted at the hearing bear upon the question of whether the Commission *should* take jurisdiction, assuming that it *can* take jurisdiction over a proposed electric line extension that is admittedly exempt under General Order 2–U–965.

In view of the issues involved and the exempt character of the proposed extension, the examiner secured an agreement of petitioners, coöperative, and company at the conclusion of the hearing to let the matter rest in status quo for one week with the understanding that the examiner would recommend to the Commission that a decision be made by December 29th.

[1] Let us first consider the question whether the Commission *can* take jurisdiction.

Section 196.49, Wisconsin Stats., under which the Commission regulates public utility extensions, provides in Par. (2) that no public utility shall begin construction, installation, or operation of any new plant, equipment, property, or facility or extension, improvement, or addition to its existing plant, equipment, property, apparatus, or facilities "unless and until it shall have complied with any applicable general *or special order* of the Commission." Paragraph (3) provides that the Commission may provide "by general *or special order* that any public utility shall submit, periodically or at such times as the Commission shall specify and in such detail as the Commission shall require, plans, specifications, and estimated costs of such proposed construction . . . *as the Commission finds will materially affect the public interest.*" (Our italics.)

Section 196.28, Wisconsin Stats., permits the Commission when it "shall believe that . . . *an investigation of any matter relating to any . . . public utility should for any reason be made*" summarily to investigate on its own motion "the same with or without notice." Our italics.)

Section 196.26, under which the complaint in the present docket was

filed with the Commission, provides for Commission investigation of a complaint made against any public utility by "any mercantile, agricultural, or manufacturing society or by any body politic or municipal organization or by any twenty-five persons that *any . . . practice or act affecting or relating to the* production, transmission, *delivery, or furnishing of heat, light,* water, *or power* or any service in connection therewith . . . *is in any respect unreasonable, insufficient, or unjustly discriminatory* . . ." (Our italics.)

These quoted portions of the law seem to us so clearly to establish the Commission's authority to take jurisdiction over the proposed extension here in controversy, if the Commission desires to do so, as to make further comment needless.

We consider next, then the question whether the Commission *should* take jurisdiction over the proposed extension. We have taken jurisdiction as to the complaint concerning the extension and have made investigation of the facts at a proper public hearing. The facts, which bear upon the decision of the jurisdictional question, appear to be as follows:

Wisconsin Public Service Corporation has operated in the town of How, Oconto county, since 1926 and has all necessary permits to occupy the public highways with its lines (Transcript, pp. 16–18). It unsuccessfully solicited customers in the town in 1929, 1930, and 1931 in an effort to extend its electric lines therein (Transcript, p. 9; Exhibit 1). Since December 1, 1936, the corporation has solicited customers in the town; asserts it has avoided solicitation along County Trunk H where it understood that the Northeastern Electric Coöperative proposes to build a main feeder line to the northern part of the town; and has made customer contracts for service with seven persons and has been asked in letters from two others to render service on an extension proposed to be built south from the north center line of section 16 for one-half mile connecting with an east-west extension 2.4 miles long starting at a point less than one-fourth mile west of the east line of section 16 and running west in sections 16, 17, and 18 to the center of section 18 (Transcript, pp. 10–13; Exhibit 1). The corporation asserts its extension was not deliberately made 2.9 miles long in order to be exempt and states that the length was determined by the location of the premises of persons wishing service. The corporation also asserts that persons immediately beyond the end of the proposed extension were solicited and did not desire service. Claim is made by the corporation that its newly adopted rural electric rates and rural extension rules are more advantageous to consumers than the minimum requirements of the Federal Rural Electrification Administration under which loans will be made to coöperatives and that the proposed extension complies in every respect with the corporation's standard extension rules on file with the Commission (Transcript, pp. 13, 14). Two of the persons who have contracted for service testified that they wanted service from the corporation and that they did not want coöperative service. (Transcript, pp. 27–34.)

The Commission files show the Northeastern Electric Coöperative has

been incorporated to render electric service to its members in a large part of the area in Oconto county, has been allocated $290,000 in funds by the Federal Rural Electrification Administration for construction of 305 miles to serve 1,026 members, and has filed a map of its proposed lines. The coöperative has not yet filed with the Commission a duly executed loan contract for securing funds for construction nor a statement showing that a majority of the prospective customers in the area are included in the project; filing of such duly executed loan contract and statement coupled with filing of a map of the proposed lines would eliminate, under Rule 1, General Order 2–U–965, the exemption which now permits the corporation to make the extension of 2.9 miles without Commission authorization.

Testimony in behalf of the petitioners at the hearing includes contentions that if the proposed extension is built, the coöperative would have to parallel one-half mile of the line to serve two persons "who promise to join with us," that the best part of the town will be occupied by the extension so that the average density per mile of coöperative line may drop below three and make construction impossible under Rural Electrification Administration loan requirements, and that eight persons, only two of whom reside along the route of the proposed extension, want coöperative service (Transcript, pp. 19 *et seq.*).

J. H. Bartz, chief petitioner, stated under cross-examination, however, that it was not the intention of the coöperative to serve immediately all persons in the town desiring service nor did he wish the utility to solicit the southern and more sparsely settled portion of the town which allegedly would have to be excluded from coöperative plans if its inclusion should bring the average density of customers per mile of line below three (Transcript, pp. 23, 27). The coöperative president stated that routes of the coöperative lines have not been definitely fixed and that their construction on routes other than those on the map filed with the Commission is possible (Transcript, pp. 24, 25).

We cannot escape the conclusion after this rather detailed recital of the facts that the evidence justifies the proposed extension and does not demonstrate that, if the line is built, the feasibility of the coöperative will be materially affected.

Petitioners incorrectly assume that an average density of three customers per mile must be maintained separately in the town of How for feasibility's sake. As the Commission understands REA feasibility requirements, it is only necessary that the average density of three per mile be maintained over an entire coöperative project, which, in Oconto county, includes a major part of the county's area.

The map of the Northeastern Electric Coöperative on file with the Commission reveals that the area proposed to be served by the utility's projected line is on the northwest fringe of the coöperative, about 20 miles from Oconto Falls, the proposed point from which energy will be transmitted. Quality of service which the coöperative could therefore render in the area is open to question from a practical engineering standpoint, while the interference of the extension, if built,

with coöperative plans seems to be at a minimum. The Commission has no evidence indicating at this time that the coöperative can render service at rates substantially below those of the public utility in this area.

The Commission believes the fact was well established at the hearing that the company had not deliberately made its extension 2.9 miles long in order to become exempt. It may, however, be pointed out in passing that, had the company wished, it might have proposed an extension of a full 3 miles which still would have been exempt under the language of Rule 1, General Order 2–U–965.

Aside from the particular facts in this case, the Commission has a general consideration in mind. Acting under a 1931 statute passed long before any REA-financed coöperatives had been formed and seeking to meet the new situation of conflicts between REA-financed coöperatives and public utilities for territory and consumers, the Commission issued General Order 2–U–965 on March 20, 1936 (14 P.U.R.(N.S.) 25) to promote orderly and economical rural electrification for the largest possible number of farmers in the shortest possible time.

Before continuing the general order beyond September 1st, its expiration date, the Commission heard suggestions of interested parties as to desirable changes. The exemption provision for short extensions up to 3 miles in areas where no coöperative had reached the point of having signed a loan contract was the principal change made in the revised order of August 27, 1936. This change was made to meet criticism that procedure in the original order, limiting exempt extensions to one mile, had tended to delay unduly rural electrification for small compact groups of farmers who would ordinarily be connected quickly.

This revised order, on which no one asked rehearing or modification, now has the force and effect of law, is accepted by all interested parties as the customary procedure, and has been scrupulously complied with. For the Commission now to depart from this stabilized procedure is not warranted except for far graver reasons than have here been submitted to us. Such departure would be unjust to all interested parties, chief of whom are the farmers desiring electric service.

[2] Petitioners' complaint requests the Commission to cancel the "indeterminate contract" of Wisconsin Public Service Corporation in the town of How and to enjoin the utility from further construction. Under existing statutes and court decisions, there are no exclusive franchises or indeterminate permits in rural towns for public utilities. The Wisconsin supreme court in South Shore Utility Co. v. Railroad Commission, 207 Wis. 95, P.U.R.1932B, 465, 240 N. W. 784, ruled that towns have no authority under the statutes to grant exclusive permits or franchises to public utilities. In the light of this decision, there is no "indeterminate contract" which the Commission, assuming it had the power, could cancel. As to the request that the Commission enjoin the utility from further construction, we point out that Dane county circuit court in an action brought by the Commission may enjoin construction by a public utility that is in violation of any gen-

eral or special order of the Commission. There is no contention here that any such violation is contemplated or has been made.

The Commission therefore finds, in view of the foregoing facts and conclusions:

1. That a proposed rural electric line extension of 2.9 miles by Wisconsin Public Service Corporation in the town of How, Oconto county, meets all the requirements of and is exempt under Rule 1, General Order 2–U–965, and that no authorization by this Commission prior to construction of the extension is necessary.

2. That the Commission has statutory authority to require, at its discretion, that a public utility secure Commission authorization for any electric extension, even though it be exempt under General Order 2–U–965, but that the facts in the present case warrant no exercise of this authority and discretion.

It is therefore *ordered*, that the petition of J. H. Bartz et al. as the town board of the town of How, Oconto county, and twenty-eight other persons, against Wisconsin Public Service Corporation be, and the same hereby is, denied.

SECURITIES AND EXCHANGE COMMISSION

Re International Pulp Company et al.

[File No. 31–361.]

Intercorporate relations, § 19.2 — Registration — Exemptions — Intrastate activities — Interstate sales.

The fact that a parent company engaged in the mining and milling business sells its product across state lines does not prevent exemption of such company and a subsidiary electric utility company from the provisions of the Public Utility Holding Company Act of 1935, under § 3 (a) (1), as companies predominantly intrastate in character.

[December 15, 1936.]

APPLICATION *for exemption from provisions of Public Utility Holding Company Act of 1935 under § 3 (a) (1); granted.*

By the COMMISSION: International Pulp Company and Oswegatchie Light and Power Company have filed with this Commission an application for exemption from the provisions of the Public Utility Holding Company Act of 1935 under § 3 (a) (1) thereof.

After appropriate public notice, a hearing on said application was held on November 30, 1936, at which time no member of the public requested to be heard.

Section 3 (a) (1) (15 USCA, § 79c) of the act provides, in part, that the Commission by order upon

application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of the act, unless and except in so far as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if "such holding company, and every subsidiary company thereof which is a public utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company thereof are organized;"

The Commission finds that the applicant, International Pulp Company, is a corporation organized under the laws of the state of New York, and it is engaged in the business of mining and milling talc. It owns several power sites, three of which are leased to its wholly owned subsidiary company, Oswegatchie Light and Power Company. The Oswegatchie Light and Power Company is also incorporated under the laws of the state of New York and it, in turn, has three public utility subsidiary companies, Rossie Electric & Manufacturing Company, LaFargeville Electric Light Company, and Hammond Light & Power Company, Inc., all corporations organized under the laws of the state of New York. All of the utility assets owned by the public utility subsidiary companies of applicants are located wholly within the state of New York.

The business of the applicant, International Pulp Company, in relation to its public utility subsidiary companies and the business of such subsidiary companies, are both predominantly intrastate in character and are carried on substantially in New York. The only interstate activities of the applicant, International Pulp Company, would be in connection with the sale of the talc produced by it. Assuming, without deciding, that such sales would be interstate in character, the question arises whether it was the intent of Congress that such interstate activities would prevent this applicant from obtaining the exemption under § 3 (a) (1) to which it would otherwise be entitled. We think not.

The Commission therefore finds that International Pulp Company, Oswegatchie Light and Power Company, and their public utility subsidiary companies, Rossie Electric & Manufacturing Company, LaFargeville Electric Light Company, and Hammond Light & Power Company, Inc., are predominantly intrastate in character within the meaning of the act and carry on their business substantially in New York, in which state all of said companies are organized.

Section 3 (a) of the act directs us to grant exemption from any provision or provisions of the act to a company falling within one or more of the classes described "unless and except in so far as it (the Commission) finds the exemption detrimental to the public interest or the interest of investors or consumers." We make no such finding.

The order of the Commission will exempt the applicants from all provi-

sions of the act which would require their registration thereunder because of their control over Rossie Electric & Manufacturing Company, LaFargeville Electric Light Company, and Hammond Light & Power Company, Inc. Accordingly, the applicants will not be obliged to register as holding companies and Rossie Electric & Manufacturing Company, LaFargeville Electric Light Company, and Hammond Light & Power Company, Inc., will not be subject to the duties to which they would have become obligated if the applicants had been obliged to register and had complied with that requirement.

Of course, if the applicants are or shall become subsidiaries of any other company which registers under the act, the order will not relieve either the applicants or their subsidiaries from any obligation to which they would be subject by being subsidiaries of such other registered holding company. The applicants and their subsidiary companies will also remain subject to any obligations imposed on them in any other capacity, such as that of an "affiliate" or a "person" as defined in the act.

The provisions of the act are sufficient to authorize the Commission to revoke or amend the order of exemption whenever it shall find that the circumstances which gave rise to its issuance no longer exist. Of course, no such revocation or modification can be made without first giving the parties in interest due notice and opportunity for hearing.

An appropriate order will issue.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Stoughton Light & Fuel Company

[2-SB-82.]

Valuation, § 327 — Franchise value.

1. An item in the balance sheet of a company representing franchise value must be disregarded in determining the value of property for the purpose of issuing securities, when there is nothing in the record to indicate that any portion of this amount was ever paid to the state or municipality granting such franchise, p. 162.

Valuation, § 51 — Issuance of securities — Book value.

2. The reasonable protection to investors required by the statute regulating securities was held to be best obtained by the use of book values where bonds to be issued would have a life of twenty years, in view of the vagaries of price levels over an extended period of time and the financial unsoundness of capitalizing the highest price level obtainable, p. 163.

RE STOUGHTON LIGHT & FUEL COMPANY

Security issues, § 88 — Amount — Net assets.

3. The Commission should not authorize the issuance of securities in excess of the net assets of a corporation, p. 163.

Security issues, § 93 — Grounds for disapproval — Overcapitalization.

4. Authority should not be granted for the issuance of bonds for the purpose of refunding a like amount of bonds when the common stock alone exceeds the book amount of net assets and the outstanding bonds are about equal to the undepreciated book value of the property and equal to 150 per cent of the depreciated book value, p. 163.

Security issues, § 25 — Powers of Commission — Reduction of securities.

Statement that the Wisconsin Commission does not understand that it has the power to force a company to reduce its securities once they are lawfully outstanding, p. 163.

Security issues, § 87 — Overcapitalization — Reorganization.

Suggestion as to reorganization of financial structure of an overcapitalized corporation which is denied authority to issue bonds for refunding, p. 164.

[December 15, 1936.]

APPLICATION *for authority to issue first mortgage bonds; denied without prejudice.*

By the COMMISSION: Under date of November 19, 1936, Stoughton Light & Fuel Company filed with the Commission an application for authority to issue $95,000 principal amount of 20-year first mortgage bonds bearing interest at the rate of 4 per cent per annum for the purpose of refunding a like principal amount of 5 per cent first mortgage bonds maturing, by the terms thereof, on October 1, 1936. The application further refers the Commission to the annual reports of the company now on file with the Commission for information concerning the financial status and history of the company. The balance sheet and income statement, as stated in the annual report for the year ended December 31, 1935, is shown below as Tables I and II:

TABLE I

Assets	
Property and plant	$181,372.54
Investments	1,200.00
Cash	627.76
Notes and bills receivable	8,114.62
Accounts receivable	4,356.83
Interest and dividends receivable	444.48
Materials and supplies	1,305.45
Merchandise appliances	850.79
Unexpired insurance	491.36
Unamortized debt discount	509.94
Standby meter	50.00
Deficit	17,618.54
Total	$216,942.31
Liabilities	
Common stock	$85,000.00
Funded debt	95,000.00
Depreciation reserve	33,789.34
Special reserves	60.76
Accounts payable	1,662.26
Capital stock tax accrued	15.00
Unmatured interest on funded debt accrued	1,242.45
Consumers' deposits	172.50
Total	$216,942.31

TABLE II

Operating revenues	$25,919.93
Operating expenses (before depreciation and taxes)	$20,245.62
Depreciation	1,200.00
Taxes	1,882.40
Total operating expenses	$23,328.02
Net operating revenue	$2,591.91
Nonoperating revenues	526.14
Gross income	$3,118.05

[1] The $95,000 of outstanding bonds referred to in this proceeding is shown as funded debt in Table I, above. It will be noted that the book value of petitioner's property and plant, as of December 31, 1935, is $181,372.54. An analysis of this property account, however, discloses that it includes $84,200 for franchises. There is nothing in the record now before us to indicate that any portion of this amount was ever paid to the state or municipality granting such franchise. It appears, therefore, that under the provisions of subsection 3 of § 184.05 of the Wisconsin Statutes, the Commission must disregard this so-called franchise value in determining the value of property for the purposes of this proceeding.

Prior to the filing of the application in this matter, and at the request of the company, the Commission's engineering department made approximate appraisals of the property of petitioner on a historical price basis and also on a present-day price basis. These appraisals show reproduction costs only but state the age and life of the various items of property. By using a straight-line method of determining accrued depreciation, the following values are indicated, as of January 1, 1936, when compared to the book figures after eliminating the franchise value mentioned above:

	Cost new	Depreciated value	Per cent condition
Present-day price basis	$161,513	$73,503	46%
Historical cost basis	99,605	45,652	46%
Company's book figures	97,173	63,383	65%

It will be seen that the company's book figures and estimated historical cost appraisal are in substantial agreement as to the reproduction cost of the property. The difference between these figures and the reproduction value on a present-day price basis appears to be the result of changes in price levels. If changes in price levels is the logical explanation of this discrepancy, it appears that the views of the Commission, as expressed in the Mondovi Telephone Company Case, 34 Wis. R. C. R. 195, 205, P.U.R. 1931C, 439, must be applied to the proceeding now before us.

One of the provisions of the statute (subsection 4 of § 184.05) is that:

"The amount of securities of each class which any public service corporation may issue shall bear a reasonable proportion to each other and to the value of the property, due consideration being given to the nature of the business of the corporation, its credit and prospects, the possibility that the value of the property may change from time to time, the effect which such issue will have upon the management and operation of the corporation by reason of the relative amount of financial interest which the various classes of stockholders will have in the corporation, and oth-

er considerations deemed relevant by the Commission."

[2–4] As stated in the first paragraph of this opinion, the $95,000 of bonds, authority for the issuance of which is requested in the pending application, are proposed to have a life of twenty years. Past history shows the vagaries of price levels over an extended period of time and the financial unsoundness of capitalizing the highest price level obtainable. It is reasonable to expect that, during the next twenty years, there will be considerable variance in price levels when compared with the present level. In view of these conditions, we believe that the *reasonable protection* to investors, which the statute (§ 184.-06) requires, would be best obtained by the use of book values for the purposes of this proceeding.

This leaves for consideration, the amount and character of securities to be authorized. Table I, above, shows $85,000 of common stock and $95,-000 of bonds now outstanding. These securities were issued prior to the enactment of any law providing for the regulation of securities of public utilities by this Commission. The financial statement of petitioner clearly shows one result of unregulated financing. The outstanding bonds alone are about equal to the undepreciated book value of the property and are equal to 150 per cent of the depreciated book value, resulting in no equity for the stockholders. We do not hesitate in stating that these amounts of stock and bonds would never have been authorized to be issued if the present statutory requirements had been in effect at the time such securities were issued. Table I shows $180,000 par value of securities (stock and bonds) outstanding. The book value of the net assets against which the securities are outstanding amounts to only $77,671.52, as reflected in the following Table III:

TABLE III

Assets		
Property and plant	$181,372.54	
Less: Franchise value	84,200.00	
Balance of property and plant	$97,172.54	
Less: Depreciation reserve	33,789.34	$63,383.20
Investments		1,200.00
Cash		627.76
Notes and bills receivable		8,114.62
Accounts receivable		4,356.83
Interest and dividends receivable		444.48
Material and supplies		1,305.45
Merchandise appliances		850.79
Unexpired insurance		491.36
Standby meter		50.00
Total		$80,824.49
Deduct Liabilities		
Special reserves		$60.76
Accounts payable		1,662.26
Capital stock tax accrued		15.00
Unmatured interest accrued		1,242.45
Consumers' deposits		172.50
Total liabilities		$3,152.97
Net assets		$77,671.52

It follows that the Commission should not authorize the issuance of securities in excess of the net assets stated above.

There is nothing in the application now before us to indicate that petitioner proposes to reduce the principal amount of its common stock now outstanding and the Commission does not understand that it now has the power to force the company to reduce its securities once they are lawfully outstanding. It should be emphasized, however, that the $85,-000 of common stock alone exceeds

the book amount of net assets, as above determined, and that irrespective of any bond issue, the company is now overcapitalized and no amount of bonds or any other type of securities should be issued as long as this condition obtains. If a reorganization of the financial structure of petitioner is accomplished which will provide for the issuance of $35,000 principal amount of 4 per cent bonds and $40,000 par value of common stock, in lieu of the amount of stock and bonds now outstanding, the Commission believes that it could make the necessary statutory findings as a prerequisite to the issuance of these amounts of securities. We construe this statement as consistent with the holding of the supreme court in Central Steam Heat & Power Co. v. Railroad Commission, 192 Wis. 595, 599, P.U.R. 1927D, 249, 213 N. W. 298.

It is therefore *ordered*, that the application of Stoughton Light & Fuel Company, to issue $95,000 of bonds, in the light of the findings hereinbefore made and set forth in the foregoing opinion, be and the same is hereby denied, but without prejudice to the right of the company to apply for a certificate authorizing the issuance of $35,000 of bonds and $40,000 of common stock in lieu of the total amount of securities now outstanding.

OREGON PUBLIC UTILITIES COMMISSIONER

Re Central Oregon Telephone Company

[U-F-651, U-F-701, P. U. C. Or. Order No. 3822.]

Valuation, § 76 — Ascertainment of reproduction cost — Original construction method.

1. The theoretical reconstruction of a telephone toll line with a crew in the employ of the company, in ascertaining reproduction cost of telephone property, is improper when it is a matter of record that the line was constructed by a contractor at a lower cost at a time when material prices and labor costs were higher than at the time of the determination of reproduction cost, p. 168.

Valuation, § 76 — Ascertainment of reproduction cost — Conformity to actual construction — Telephone lines.

2. A reproduction cost estimate of exchange lines is too low when the estimator reconstructs with single-wrapped aerial cable instead of double-wrapped as actually exists in the plant, p. 168.

Valuation, § 378 — Right of way — Proof as to cost.

3. No allowance was made for telephone right of way where rights of way had cost the company nothing and no proof was offered that they would cost anything if construction were commenced at the time of a reproduction cost estimate, it appearing that a lumber company was making no charge for use of rights of way, p. 168.

Valuation, § 327 — Franchises.

4. Allowance was made for a telephone company's franchise although no book entry appeared for that item and no proof was offered with respect thereto, p. 168.

Valuation, § 300 — Materials and supplies — Average on hand.

5. The average of materials and supplies on hand for the past two or three years was allowed in addition to an allowance for working capital, in valuing telephone utility property, 168.

Valuation, § 30 — Measures of value — Reproduction cost — Book value.

6. More weight was given to reproduction cost than to book value in arriving at the value of telephone property for rate-making purposes, p. 169.

Depreciation, § 77 — Telephone property.

7. A composite annual rate of depreciation to be applied to the depreciable book fixed capital of a telephone company was fixed at 4 per cent, p. 170.

Expenses, § 95 — Salaries and wages.

8. Conclusions as to rates of a telephone company were largely based upon the premise that wages and salaries paid to operating personnel would be increased instead of remaining at an extremely low level, p. 170.

Return, § 111 — Telephone company.

9. A return of 6 per cent was allowed a telephone company in a period of low interest rates, p. 171.

[November 16, 1936.]

INVESTIGATION *of rates of a telephone company; rate reduction ordered.*

McCOLLOCH, Commissioner: Central Oregon Telephone Company, the respondent herein, is an Oregon corporation, which owns and is engaged in the operation, management, and control of plant and equipment for the conveyance of telephone messages with wires for the public, and is a "public utility" as defined in § 61–201 of the Code as amended. Local exchanges are maintained and local service is rendered in the towns of Burns and Crane in Harney county, Oregon; toll lines connect Crane with Burns, Burns with Canyon City (Grant county), and Juntura with Vale (Malheur county).

I

History

The company was organized October 31, 1921, with an authorized capitalization of 1,000 shares of common stock of the par value of $25 each, all of which is now issued and outstanding. On July 2, 1929, the authorized capitalization was increased to 3,000 shares of common stock without change in par value, or a total authorized capitalization of $75,000. No part of the additional authorized stock has been subscribed for or issued. The outstanding stock of the company is held by thirty-three stockholders, two of whom

between them hold 86.5 per cent thereof. These same two individuals also hold 88.6 per cent of the capital stock of Oregon-Washington Telephone Company.

II

Prior to the organization of this company telephone facilities in the affected territory were furnished by Inter-Mountain Telephone and Telegraph Company. After having acquired the physical assets of said company in the year 1921, the corporators of Central Oregon Telephone Company, in January, 1922, sold the same to the new company for the following consideration: The issuance of $25,000 par value common stock and the assumption by the company of $35,000 in existing indebtedness against the plant.

On February 1, 1922, opening book entries of the Central Oregon Telephone Company were made as follows:

Assets	
Plant and equipment	$65,000.00
Liabilities	
Capital stock	$25,000.00
Notes payable	32,710.00
Taxes accrued	1,012.42
Interest accrued	109.00
Surplus	6,168.58
Total liabilities	$65,000.00

In July, 1927, the physical assets were sold to Fred Herrick Lumber Company for $41,000, which sum apparently exactly equaled the debts and obligations of the company as of that date. On the same date the lumber company acquired the capital stock, but whether any additional consideration was paid therefor is not disclosed. On or about March 15, 1929, Blaine Hallock acquired all of the capital stock of the company from the trustee in bankruptcy of Fred Herrick Lumber Company for the sum of $5,000. The books of the company indicated on that date an indebtedness due to the lumber company totaling $17,031.93, which item was apparently liquidated by the said payment of $5,000 and the balance of $12,031.03 was credited to surplus.

On May 21, 1930, Mr. Hallock and the minor stockholders, two in number, gave an option on the outstanding 1,000 shares to B. H. Crandall of Chicago for the sum of $85,000, which option was thereafter exercised. At the time of said option the corporation was indebted to Mr. Hallock in the amount of $45,200, secured by a first mortgage on the company's property, and was further indebted to Mr. Hallock on unsecured notes in the amount of $5,650. Through the transaction between Mr. Crandall and Mr. Hallock the unsecured notes eventually became payable to the Allied Telephone Utilities Company of Chicago, Illinois, which also acquired the Crandall stock. About the same time the last-named corporation secured stock control of Oregon-Washington Telephone Company.

Both the secured and unsecured notes have since been liquidated and the mortgage removed from the property by payments made to Hallock by the Allied Telephone Utilities Company, Central Oregon Telephone Company, and Patterson, Copeland & Kendall of Chicago. Through the medium of innumerable intercompany transactions the Central Oregon Telephone Company now has outstanding unsecured notes payable to

the Oregon-Washington Telephone Company in the amount of $23,000, and to the Illinois Allied Telephone Company in the amount of $19,300. Mr. Crandall's stock has since passed to the thirty-three stockholders previously mentioned by reason of liquidation of Allied Telephone Utilities Company.

III

Book Fixed Capital

In 1918 one E. T. Busselle, a consulting engineer, prepared what he called an "Evaluation of the Inter-Mountain Telephone and Telegraph Company" as of January 1, 1918.

This study prepared by Mr. Busselle is in evidence herein and was evidently based largely upon original cost of construction, with the reproduction cost theory used only on those parts of the property for which no original cost data was available. The cost new of the then existing property of the respondent company's predecessor as found by Busselle was $108,642, and this figure is followed in the exhibit by a further finding described as "present value" of $83,-850.

In December, 1922, the $65,000 Plant and Equipment account which appears in the opening book entries (see Par. II above) was distributed to primary accounts upon the basis of the same items as used by Mr. Busselle in his study and in the proportion which $65,000 bears to $105,470 (the cost new item mentioned above, less the working capital and materials and supplies included therein). Since that date the company has expended for new construction approximately $65,000, of which amount $62,850 has been expended since 1926, and for which accurate cost data is available. The company has retired from its fixed capital accounts properly included in the Busselle valuation amounting to $51,429.83.

The record discloses that insufficient retirements amounting to approximately $3,100 have been made for certain of the property removed from service. Taking this into consideration, it appears that there remains in the company's book fixed capital accounts approximately $10,-470 of property included in the Busselle valuation. This amounts to only 12.7 per cent of the company's book fixed capital. The major portion of this original property still remaining in service consists of the Juntura-Vale toll line and the Burns-Crane toll line, which have remained practically unchanged throughout the years. These lines are now stated in the fixed capital accounts at the prorated amounts derived from the Busselle appraisal, using the process hereinabove mentioned. Other items of the original property still remaining in service are likewise so stated upon the company's books.

To place the fixed capital accounts entirely on a cost new basis it is necessary to add to the fixed capital account the amount of $6,997, the difference between the remaining cost new of the original property included in the Busselle valuation and the amounts now stated on the books for such property. While the present book fixed capital of the company does not disclose an actual unbroken record of original cost, except as to the property constructed since December, 1922, inasmuch as this por-

tion of the property aggregates 87.3 per cent of the total fixed capital and reliable estimates are available of the original cost of construction of the balance, an extremely close estimate can be made of the original or historical cost of construction.

Finding of Fact—Fixed Capital

Based upon the foregoing, it is found and determined that the original or historical cost of the telephone plant of the company, not including working capital, is $82,097.12 as of December 31, 1935.

The company's balance sheet as of December 31, 1935 (adjusted by the Commissioner's accounting staff, and further adjusted in accordance with the above findings) is as follows: [Table omitted.]

IV

Reproduction Cost New

Reproduction cost studies were made for the company by Messrs. Minor Corman and F. E. Miller, and for the Commissioner by Mr. V. H. Dunkin, telephone engineer.

Said studies were based upon an inventory of the property taken as of December 31, 1934. The Corman-Miller valuation reflects 1934 price levels, while Mr. Dunkin used 1935 prices in his study. Mr. Dunkin brought his appraisal down to December 31, 1935, by adding to it 1935 net additions and betterments, while the company witnesses did not submit 1935 additions.

The following table shows in parallel columns: (1) The adjusted book values; (2) the Corman-Miller values; and (3) the Dunkin values for the principal items involved as of December 31, 1934 [Tables omitted.]

[1] Both the company witnesses and Mr. Dunkin theoretically reconstructed the property with a crew in the employ of the company. It is a matter of record that the Canyon City-Burns toll line was constructed in the years 1927–1929 by a contractor at a cost of approximately $19,000. In these years material prices and labor costs were higher than in 1934. The contractor who constructed the line still lives at or near Burns and is still engaged in the business of constructing telephone lines. The method used by the witnesses, at least in so far as construction of this particular toll line is concerned, is expressly disapproved. It would seem to be better practice for an engineer, when theoretically as well as actually constructing a property, to approach the problem in the method which will accomplish the least drain upon his theoretical employer's capital. Under somewhat similar circumstances it has been said: "The well-managed modern utility invests its capital with rigid economy and at conservative costs. Why should not estimates of reproduction costs be made accordingly?" Re Barboursville Water & Light Co. (1927) 2 W. V. P. S. C. Decisions 448, 452.

[2–5] Mr. Dunkin's "Exchange Lines" figure is too low; he reconstructed with single-wrapped aerial cable instead of double-wrapped, as actually exists in the plant. He is also too low on general equipment due to failure to include an office safe in his consideration. The time allow-

ance given by Mr. Dunkin for construction is too short. Increased "interest during construction" and appropriate increases in the structural items have been allowed to compensate for such deficiency. Overheads have been allocated to each item separately instead of a lump sum allowance as made by Corman and Miller. Going concern value has been considered and allowed in each item. The company's claim for right of way is disallowed. Rights of way cost the company nothing and no proof was offered that they would cost anything if construction were commenced today. The attempted justification by the company of an allowance for right of way for the Burns-Canyon City line is too fine spun for actual application; the basic fact remains that the Hines Lumber Company made and makes no charge for use of its rights of way. An item is allowed for the franchise at Burns of $275, although no book entry appears for that item, and no proof was offered with respect thereto. The average of material and supplies on hand on December 31st for the past two or three years is $2,250, and that item is allowed in that amount. For cash necessary for working capital the sum of $750 is allowed.

Finding of Fact—Reproduction Cost New

Based upon the foregoing it is found and determined that to reproduce the telephone plant of the company, reasonably used and useful in the service of the public in normal new and usable condition as a going concern, including working capital, said construction to be done by a crew in the employ of the company at day wages, and none thereof by contract, would have required on December 31, 1935, the expenditure of $100,000.

Finding of Fact—Reproduction Cost Depreciated

It is further found and determined that the average depreciation of the depreciable property in said telephone plant on December 31, 1935, was 20 per cent of said reproduction cost, and that the cost of reproduction of said property on said date in its depreciated condition, under the theory of reproduction used by the witnesses was the sum of $80,620.

V

Finding of Fact—Value

[6] In arriving at the value of the property for rate-making purposes more weight is given to the reproduction cost than to book value, with this exception: For reasons heretofore stated it is not believed that the "value" of the Burns-Canyon City toll line is reflected in the reproduction cost studies in evidence. In so far as that toll line is concerned the book cost is taken (which includes not only a contractor's profit but actual construction overheads) thus adopting the theory of construction used by the witnesses, but not the amounts.

Based upon the foregoing, and full consideration of all the evidence received it is found and determined that the value for rate-making purposes on December 31, 1935, of the property of Central Oregon Telephone Company used and useful in the service of the public in its then depreciated condition, and including

materials and supplies and cash on hand, was the sum of $77,500.

VI

Depreciation—Discussion

For the past eight years income available for interest, dividends, and surplus has been as follows: [Table omitted.]

The foregoing amounts take into consideration deductions for depreciation which range from a high of $6,000 in each of the years 1931 and 1932, to a low of $4,022.88 in 1935. The balance in the depreciation reserve as of December 31, 1935, is $20,733.43 (adjusted). The company's estimate of the actual depreciation of its property in dollars, as disclosed in its reproduction cost new exhibit, is $23,734.83, while Mr. Dunkin in his study places the amount at approximately $20,000.

VII

Section 61–217, Oregon Code 1930, provides that the Commissioner shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each utility and that the utility shall conform its depreciation accounts to such rates so ascertained and determined.

Finding of Fact—Composite Percentage for Future

[7] Studies of the rates of depreciation for the several classes of the company's property were submitted by the Commissioner's accounting staff (Exhibit 6). These studies indicate that a composite annual depreciation rate of 4.028 per cent would be proper and adequate. Based upon the finding as to original costs (Par. III hereof), it is necessary to make certain revisions of the fixed capital bases to which the recommended rates are applied. Based upon the foregoing, including all evidence presented on the subject, it is found and determined that the composite annual rate of depreciation to be applied to the depreciable book fixed capital of the Central Oregon Telephone Company for the year 1935 is 4 per cent, and that the amount of such annual depreciation in dollars for said year is $3,219.

It is further found and determined that the company should use the said 4 per cent annual rate of depreciation in making the entries upon its books for depreciation in the year 1936 and for each year thereafter. Jurisdiction is specifically reserved, however, under the provisions of said § 61–217 to make such changes in the rates of depreciation from time to time as may be found advisable and necessary.

VIII

Rate of Return

In 1932 certain farmer lines were abandoned and others sold by the company. Book adjustments made by the Commissioner's accounting staff (Exhibit 1) show that $12,858.62 has been placed in an item known as "Other Debit Accounts." A substantial portion of this item should be charged against surplus and in considering rate of return for the future it is contemplated that the balance of this sum must be absorbed by the company over a period of years from income.

[8] Also, in considering rate of return it is felt that the extremely low

wages paid to operating personnel cannot long continue, and the conclusions hereinafter reached are largely based upon the premise that wages and salaries paid to operating personnel will be increased approximately $1,000 per year.

This property has adequate depreciation reserve sufficient to balance all depletions of capital. For the period 1929 to 1935, both inclusive, net credits to surplus have totaled approximately $40,000, and from an exhibit offered in evidence indicating earnings for the year ending May 31, 1936, it appears that at least an additional $4,000 for surplus is in sight for the year 1936. From the foregoing it is apparent that this company under its existing rate schedules has been able to continuously and steadily pay all expenses of operation, setting aside the necessary sums for depreciation, payment of interest and reasonable dividends, leaving substantial sums to be passed on to the surplus account; and that its rate of return during those years has been more than sufficient to assure confidence in the financial soundness of the utility to maintain its credit and to enable it to raise money necessary for the proper discharge of its duties. United R. & Electric Co. v. West, 280 U. S. 234, 252, 74 L. ed. 390, P.U.R.1930A, 225, 50 S. Ct. 123.

IX

Finding of Fact—Rate of Return

The 1935 "gross income" from revenue after payment of taxes and operating charges was, as above stated, $7,260.77, which is a return of 9.3 per cent on the value of $77,500, and if allowance be made for the additional $1,000 in wages and salaries the return would still be 8 per cent on the said $77,500 value. 1934 gross income shows a 6.2 per cent return on said value; 1933 shows a 4.5 per cent return thereon; while the income for the twelve months ending May 31, 1936, indicates an 11 per cent return, not taking into consideration wage increases, and a 9.8 per cent return if such wage increases be taken into consideration.

[9] In this period of low interest rates a return of more than 6 per cent per annum, except in exceptional cases, does not seem justified, and it is hereby found and determined that the present and prospective future returns upon the value of the Central Oregon Telephone Company are greater than a fair rate of return, and the rates and schedules of said company are hereby found and determined to be unreasonable, unjust, and unlawful in so far as the same produce such excessive rate of return as aforesaid.

X

The schedules and rates of this company were not considered at the hearing. This matter will be kept open and an appropriate order hereinafter entered requiring the company to submit proposed changes in its rate schedules designed to decrease its "gross revenue" as said term is defined in the Uniform Classification of Accounts by not less than the sum of $2,500.

XI

Adjustments to Fixed Capital

It is further found and determined

that the adjustments to book fixed capital made by the Commissioner's accounting staff as the same are disclosed in Exhibit I and the further adjustments set forth in paragraph II herein shall be allocated to the accounts in the manner prescribed in said exhibit and paragraph II hereof.

XII

Charges to Surplus

It is further found and determined that the company should forthwith charge against its Surplus Account the amount of $7,000 and credit "Other Debit Accounts" with a like amount, this entry being a partial extinguishment of the item of $12,858.62 hereinbefore mentioned (see Par. VIII). The balance of $5,858.62 should be amortized by charges to Account 370, "Miscellaneous Charges to Income," in equal annual portions over a period of seven years commencing with the year 1937.

MISSOURI PUBLIC SERVICE COMMISSION

Re The Gas Service Company

[Case No. 9274.]

Certificates of convenience and necessity, § 165 — Granting without a hearing.

A hearing is not required for the proper determination of the issues involved, but authority may be granted without such a hearing, upon an application by a gas company for a certificate of convenience and necessity to operate a natural gas distribution system in a city, without gas service of any kind, which has granted a franchise to the company.

(ANDERSON, Commissioner, dissents.)

[November 21, 1936.]

APPLICATION *by gas company for certificate of convenience and necessity to operate a natural gas distribution system; granted.*

By the COMMISSION: This case is before the Commission upon the application of The Gas Service Company for a certificate of convenience and necessity to construct, maintain, and operate a gas distribution system in the city of Higginsville, Missouri, for the purpose of rendering gas service to said city and its inhabitants.

The applicant is a corporation organized under the laws of the state of Delaware and authorized to transact business in the state of Missouri. It states that proof of its authority to transact business in Missouri appears in other formal cases that have been submitted to this Commission. It will furnish the gas service by dis-

tributing natural gas through the system it proposes to construct.

The applicant shows that on October 31, 1936, the city of Higginsville by ordinance duly passed and approved granted it a franchise known as Ordinance No. 63. The franchise is for a period of twenty years and provides for the operation of a gas distribution system in said city. Copy of the franchise as published in the local newspaper is attached to the application. Also attached to the application is a copy of the applicant's balance sheet showing its financial condition as of October 31, 1936. Applicant states that in its negotiations with the city for the franchise it promised the city that upon receipt of authorization work on the construction of the distribution system would begin immediately.

The application shows the city of Higginsville is now without gas service of any kind, natural or artificial, but that when the proposed system is completed it will be the only source available to the residents of said city for such service. The applicant will secure its natural gas supply from the pipe line of the Cities Service Gas Company. That pipe line passes in close proximity to the aforesaid city. The applicant states that an adequate supply will be available at all times.

The United States Census of 1930 shows that the city of Higginsville had then a population of 3,339. With an adequate supply of natural gas available near the city limits it appears that the public convenience and necessity will be served by the construction of the proposed distribution system.

From the information that is filed with the application, the Commission is of the opinion that a hearing is not required for the proper determination of the issues involved and after due consideration finds that the authority requested should be granted.

ANDERSON, Commissioner, dissenting: I dissent from the views expressed in the finding and order in this case and concurred in by the majority of the Commission. In the majority opinion it is held that the Commission as a matter of law has the right to grant a certificate to a gas corporation to construct, maintain, and operate a gas distribution system in a duly incorporated municipality in this state without a hearing to determine that the same is convenient for the public service. I think that the finding in that opinion and the results arrived at do not follow either the letter or spirit of the General Regulatory Act or the law applicable to this cause of action.

In order that my position may be entirely clear, I wish to review somewhat in detail the facts and the law applicable to this cause of action, and I express my views in the following dissenting opinion:

This matter is an application on behalf of the Natural Gas Distributing System, which is a corporation duly organized and existing according to law, in which the applicant company requests the right to construct, maintain, and operate a gas distribution system in the city of Higginsville for the purpose of furnishing natural gas service to said city and its inhabitants. The majority opinion held that there should be a certificate granted to the

applicant company without a hearing. With this portion of the majority opinion I cannot agree. For the Commission to properly dispose of the instant case it is necessary for it to consider certain portions or parts of the General Regulatory Act. Under that enactment it is conclusive that this Commission is a creature of statute and the only power or authority that it has concerning gas corporations is the same conferred upon it as a matter of law and since the Commission is a statutory creature it necessarily follows that it must travel in a statutory orbit. Under § 72 of the General Regulatory Act, or § 5193 of the Rev. Stats. of Missouri 1929, it is evident that before any gas corporation can construct, maintain, or operate a gas distribution system within a municipality in this state it is necessary for the said gas corporation to obtain pursuant to hearing a certificate from this Commission granting the authority prayed for by the applicant company. This section of the statutes definitely sets out not only the steps the gas corporation shall pursue but also what action shall be taken by the Commission. There is a proviso in the above-mentioned section which provides that before a certificate shall be issued a certified copy of the charter of such corporation shall be filed with the Commission, together with a verified statement of the president and secretary of the corporation showing that it has received the requisite consent of the municipal authorities in the city or cities involved. The same section also provides that the Commission shall have the power to grant the permission and approval herein specified *whenever it shall after due hearing determine* that such construction or such exercise of the right, privilege, or franchise is necessary or convenient for the public service. The effect or purport of the above provisos is that the Commission cannot grant an applicant a certificate until after the conditions therein contained have been complied with.

The Commission, as a matter of law, should follow the primary rule of statutory construction, which is to ascertain and give effect to the legislative intent. The legislative intent of any given statute is to be obtained primarily from the language used in the statute. Grier v. Kansas City, C. C. & St. J. R. Co. (1921) 286 Mo. 523, 228 S. W. 454; St. Louis & I. M. Railroad v. Clark (1873) 53 Mo. 214. Further statutes should not be construed so as to pervert their very object, Missouri Granitoid Co. v. George (1910) 150 Mo. App. 650, 131 S. W. 470. Where the language of the statute is plain and unambiguous there is no occasion for construction. State ex rel. Cobb v. Thompson (1928) 319 Mo. 492, 5 S. W. (2d) 57; Donaldson v. Donaldson (1913) 249 Mo. 228, 155 S. W. 791; Reay v. Elmira Coal Co. (1930) 225 Mo. App. 102, 34 S. W. (2d) 1015. The effects given statutes must be accorded to their plain and obvious meaning. United States v. Standard Brewery (1920) 251 U. S. 210, 64 L. ed. 229, 40 S. Ct. 139; United States v. Tyler (1882) 105 U. S. 244, 26 L. ed. 985; Betz v. Kansas City S. R. Co. (1926) 314 Mo. 390, 284 S. W. 455. Since the phraseology has been used in the section heretofore mentioned of the Gen-

eral Regulatory Act that ". . . whenever it shall after due hearing determine . . ." it therefore necessarily follows that the legislative intent of that proviso is so plainly designated by the language of the statute itself that there is no room for construction and the Commission as a matter of law should not indulge in speculation as to any probable way of disposing of an application other than as set out in the statute. In the majority opinion it is conclusive that the Commission chose not to follow the statute, which as a matter of law it is obligated to do, and the disposition of the application in question should have been as heretofore set out and it should accordingly be so *ordered.*

NORTH CAROLINA UTILITIES COMMISSION

Re Durham Telephone Company

Service, § 452 — Telephone — Two-party line.

A telephone company should be permitted to discontinue two-party service with respect to all future subscribers, including present subscribers who may voluntarily discontinue service and again seek service (except in the case of subscribers changing their place of residence), where there are few two-party lines in service and telephone subscribers are confined principally to those demanding single-party service and those demanding four-party service.

[December 1, 1936.]

APPLICATION *for authority to discontinue two-party telephone line service to future subscribers; granted in qualified form.*

WINBORNE, Commissioner: This cause comes on to be heard before the Utilities Commission upon the petition of the Durham Telephone Company, asking that two-party telephone service be declared obsolete with respect to all future subscribers for said service.

The petition in this cause was filed on July 18, 1936, copy of which was duly served upon the mayor of the city of Durham, and the case set for trial Wednesday, October 21, 1936, and notice of said hearing duly published in the Durham Herald Company newspapers, published and circulating in Durham county. Thereafter, at the request of the city of Durham, through its attorney, Colonel S. C. Chambers, the hearing was postponed, in order that the said city might have more time to file protest or answer, and later set for November 30, 1936, of which notice was again published in the said Durham Herald Company newspapers.

On said November 30, 1936, the Durham Telephone Company, peti-

tioner, appeared through its president, T. D. Wright, General Manager E. H. Danner, and Attorney Basil Watkins, all of Durham, North Carolina. The city of Durham interposed no opposition, filed no answer, and, on November 18, 1936, through Colonel S. C. Chambers, advised this Commission, in writing, that the city of Durham "has withdrawn its protest against allowing the Durham Telephone Company to discontinue additional two-party telephone lines." No protest or opposition from anyone was made at the hearing.

From the evidence and affidavit adduced at the hearing, it was made to appear that telephone demands in Durham are quite different from those which exist in most cities, in that there are few two-party lines in service and that the telephone subscribers are confined principally to two classes, namely, one class which demands single-party service and the other class which demands four-party service. Also it was shown that the two-party subscribers are so few and scattered that the majority of the subscribers now on two-party service and paying the rates therefor are getting single-party service at a two-party rate, due to the fact that there is no other subscriber in the same vicinity who desires two-party service, all of which means that some subscribers are paying one rate for single-party service and others another.

It was further shown that the question of elimination of two-party service was thoroughly discussed and considered by the board of aldermen in the city of Durham and that as the result of said investigation the city of Durham decided to interpose no objection and directed its attorney, Colonel S. E. Chambers, to write the letter to this Commission hereinbefore referred to. The petitioner is not asking that two-party service be denied the present subscribers receiving two-party service but that two-party service be declared obsolete with respect to all future subscribers, and with the understanding that any present subscriber to a two-party service, who voluntarily abandons the service, would be considered as a new subscriber at any time in the future and would have available to him only such class of service as is then in effect.

Upon consideration of the whole case, this Commission is of the opinion that the petitioner is entitled to the relief sought, except as hereinafter appears.

Wherefore it is now *ordered,* that the Durham Telephone Company be and it is hereby authorized and directed to continue the classes of service now being rendered to all of its present subscribers, but that the two-party service be discontinued from date hereof with respect to all future subscribers, and that any subscriber now receiving two-party service, who voluntarily discontinues his subscription, be thereafter treated as a new subscriber and entitled only to the classes of service in effect from and after the date of this order, *provided:* the moving of the residence of a subscriber from one place to another shall not be deemed a voluntary discontinuance of his subscription.

Industrial Progress

Virginia Electric & Power to Spend $2,874,100

VIRGINIA Electric & Power Company plans to spend $2,874,100 during this year for improvements and extensions in the electric department throughout the entire system, according to Jack G. Holtzclaw, president.

Of this amount, $300,000 will be used to improve power station facilities and electricity distribution in the Richmond division; $500,000 for similar work in the Norfolk division; and approximately $850,000 will be spent on extensions connecting new customers throughout the system. About $350,000 will be expended for the construction of new rural power lines.

Combustion Engineering to Handle "Elesco Superheaters"

WITH a view to promoting closer coördination in handling the details of complete steam generating units, and thereby to better serve the industry, certain functions and personnel of the Industrial Department of The Superheater Company have been transferred to Combustion Engineering Company, Inc. This concerns the sales, engineering and servicing of Elesco superheaters and economizers for stationary plant installations, the manufacture and inspection of which will be handled, as heretofore, at the East Chicago Works of The Superheater Company.

New Equipment Purchased by Coördinated Transport

SUBSTANTIAL purchases of new transit equipment of an advanced design were made by Public Service Coördinated Transport during 1936, the annual report of Public Service Corporation of New Jersey, recently released, shows. The equipment included 100 all service vehicles, 185 lightweight motor buses, 27 oil-electric buses and 65 gas-mechanical super service buses.

An additional order for 195 all service vehicles was placed in January to provide for the company's trolley substitution program in 1937.

Issues Transformer Catalogue

R. E. UPTEGRAFF Manufacturing Company has issued a 16-page, 8½ by 11 inches, illustrated catalogue describing Uptegraff Distribution Transformers. Manufacturing methods and procedure are described in detail.

The company furnishes distribution transformers in standard sizes up to 500 kva, 25 or 60 cycles, single and three phase. Voltage ratings are in accordance with the National Electrical Manufacturers Association and each transformer is given the standard commercial tests required by the American Institute of Electrical Engineers.

This catalogue, No. 105, may be obtained from the R. E. Uptegraff Manufacturing Company, 300 North Lexington avenue, Pittsburgh, Pennsylvania.

Utilities Report Record Gas Appliance Sales

GAS Appliance sales of the New Jersey Public Service Company in 1936 were 32.21 per cent better than in 1935, according to their annual report. Progress in developing gas water heating was indicated by the sale of 6,775 automatic gas water heaters in 1936, compared with 1,860 in the previous year. Gas refrigerator sales again set a record, numbering 6,027 units. There were 17,834 gas ranges sold, 1,713 more than in 1935.

Domestic gas appliance sales of the Brooklyn Union Gas Company are running at record high levels, according to Clifford E. Paige, president. Sales of gas appliances in January and February, he said, were 40 to 45 per cent ahead of sales in the corresponding period in 1936.

Subsidiaries of Columbia Gas & Electric to Spend $15,500,000

MORE than $15,500,000 will be spent this year by electric operating subsidiaries of Columbia Gas & Electric Corporation, as compared with outlays of more than $6,400,000 last year, according to a recent announcement. Electric capital expenditures in the Dayton area will total $2,895,000 and in the Cincinnati area, $12,651,000.

The Dayton Power & Light Company will complete this year a 25,000-kw generating unit in the main station. This calls for an expenditure of $3,150,000, of which $2,007,000 will be spent this year. Rural line extensions, transformers, and distribution lines call for an expenditure of over $600,000. Plans for the construction of rural electrification and the stimulation of purchases of electrical appliances are to be actively continued. Last year approximately 282 miles of rural lines were constructed which resulted in the addition of 1,512 rural customers. The company now serves a total of 6,873 rural customers.

The Cincinnati Gas & Electric Company will spend approximately $3,035,000 on additional generating capacity in the West End station this year. Additional generating capacity at the Columbia station calls for an expenditure of $4,850,000. Expenditures for substations and substation equipment total $1,625,000;

transmission lines, $610,000; distribution lines, $440,000; and garage and improvements to office building, $233,000. Last year 226 miles of rural electric lines were constructed in the Cincinnati area, resulting in the addition of 921 rural customers. The Cincinnati group added 535 customers to existing lines. The group now serves a total of 21,700 customers outside of the incorporated areas.

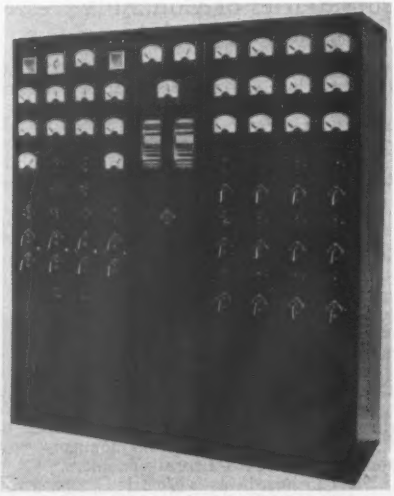
Bailey Issues New Catalogues

BAILEY Meter Company, Cleveland, Ohio, has available a new 16-page, 8½ by 11 inches, booklet (Bulletin No. 163), describing the Bailey Multi-Pointer gage. This diaphragm operated type gage employs a diaphragm material which is resistant to oil, acid, caustic and heat. It possesses exceptional flexibility with strength far in excess of animal skins and tissues of the goldbeater type.

A 40-page, 8½ by 11 inches, illustrated catalogue (Bulletin No. 301), also issued by the Bailey Meter Company, describes in detail Bailey Fluid Meters for steam liquids and gases. Both publication may be obtained upon request.

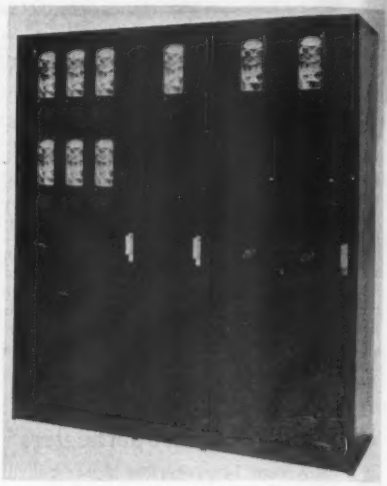
Metal-Enclosed Duplex Switchboard

THE Delta-Star Electric Company, Chicago, Illinois, announces a three unit switchboard equipped with semi-flush instruments used with a fifteen unit Metal-Clad Switchgear controlling two 1500 kva, 2300 volt generators and twelve feeders.



(FIG. 1) *Front of Switchboard*

The left hand unit (front view, fig. 1) contains controls and instruments for two generators, the center unit carries voltmeters, indicating wattmeters, recording watthour meter and recording voltmeter. The right hand unit controls twelve feeders each with an ammeter, ammeter transfer switch and oil circuit breaker control.



(FIG. 2) *Rear of Switchboard*

The right hand unit (rear view, fig. 2) carries watthour meters and test blocks for each generator circuit. The generator regulators are in compartments behind hinged doors above the regular control handles. The center unit (rear view) carries a totalizing watthour meter and test block. Left hand unit (rear view) carries watthour meters and test blocks, for six feeder circuits.

New Line of Trucks Announced by International Harvester

OF special interest to truck users is the recent announcement that International Harvester has an entirely new line of motor trucks ranging in capacity from light delivery units to the largest six-wheeler. These new models include conventional four-wheel units, six-wheelers with both dual-drive and trailing axles, and cab-over-engine types. The complete International line consists of 26 models in 77 wheelbases with gross vehicle weights ranging from 4,400 to 62,000 pounds.

Powerful truck engines, numerous wheelbases, a variety of rear axle ratios, two-speed rear axles, and multiple-speed transmissions, especially in the heavy-duty models, permit accurate selection from every standpoint of the right truck for each specific hauling task.

Many decided improvements and new features of design and construction have been incorporated in the engines of the International models. Every feature has been fully tested and proved and all contribute greatly to performance, greater power, and economy.

While greater power has been provided for each of the new models, there has been no

sacrifice in the fuel economy. Performance, climbing ability, pulling power, and operating economy are decidedly improved.

Plans $408,000 Expenditure

SOUTHERN Colorado Power Company will spend $408,000 during 1937 for new construction, an increase of $248,000 over 1936.

Large Expansions by Westinghouse Elec. & Mfg.

IN order to meet expanding requirements, Westinghouse Electric & Manufacturing Company has found it necessary to enlarge certain of its manufacturing facilities, according to a recent report. At East Pittsburgh, facilities for the production of industrial motors are being increased approximately 25 per cent. At Mansfield, a combined office and warehouse building has been constructed, releasing for manufacturing purposes the space previously occupied for office use. A manufacturing plant has been purchased at Lima, Ohio, to which the production of small motors is being transferred from East Springfield, Mass., the released space at East Springfield being utilized for increased production of household devices.

New High Cycle Electric Tools Booklet

THE Rotor Air Tool Company, Cleveland, Ohio, presents "The Facts about High Cycle Electric Tools" in a 12-page, 8½ by 11 inches, illustrated booklet. Engineering, production, and operating facts about high cycle electric tools are given, together with a description of the outstanding improvements in the design of these tools which result in increased power, higher load speed, lighter weight, lower power costs, and lower maintenance costs. The booklet also points out the opportunities for increased production and reduced operating costs by the installation of high cycle electric tools. Specifications for this high cycle tool equipment also are included.

A copy of this booklet may be secured from Rotor Air Tool Company.

Tropical Coatings for Utilities

THE Tropical Paint & Oil Company's 16-page, 8½ by 11 inches, illustrated booklet (American Institute of Architects Document 12-b-23) shows a wide variety of applications of Tropical coatings throughout the public utility industry.

Between five and six hundred utility companies are using Tropical custom made coatings for maintenance. Many of these utility plants having Tropical protection are illustrated.

Elastikote, reinforced with bakelite; Tropelite, the coating of a thousand uses; Rhinamel, reinforced with bakelite; Roofkoter and Tocoseal, to restore and repair roofs of all kinds; Floorkote; and Cementkote are some of the many products described. Other products of special application in the utility field include Tropical Red Boiler Seal and Duratite, described as the perfect plastic for caulking and glazing; Fume-fite White Enamel; B & P Tung Oil Enamel; and ACB Primer for metal reinforced with bakelite. Red Tropical Boiler Seal also is described in a separate 8-page, illustrated booklet (A.I.A. Document No. 37-c). Both of these descriptive booklets are especially prepared for utility companies and may be obtained by writing The Tropical Paint & Oil Company, Cleveland, Ohio.

Purchasing Agents Convene in Pittsburgh, May 24th-27th

AN elaborate program and displays of the Inform-A-Show will feature the Twenty-second Annual International Convention of the National Association of Purchasing Agents which is to be held in the William Penn Hotel, Pittsburgh, Pa., May 24th to May 27th, inclusive. An "Early Birds'" dinner is scheduled for Sunday evening, May 23rd. Hotel reservations thus far received assure a record breaking attendance.

The Inform-A-Show will represent many industries of the country and is expected to be the most educational and spectacular in the history of the Purchasing Agents' Association.

Some of the country's outstanding leaders will address sessions of the convention. Groups of delegates will be conducted on tours through a number of Pittsburgh's biggest mills and plants. Thomas D. Jolly, president of the Pittsburgh unit of the N.A.P.A. and general purchasing agent for the Aluminum Company of America, is chairman of the program committee.

New Corporation Formed by Two Glass Concerns

PITTSBURGH Plate Glass Company and Corning Plate Glass Works have formed a new corporation to deal exclusively with the development, manufacture and sale of certain types of glass for the architectural and building fields, according to a joint announcement of the two companies.

The new corporation, which will be known as the Pittsburgh-Corning Corp., will supply glasses commonly known as structural or architectural glass, such as glass block, glass tile, colored Carrara structural glass, and molded glass—products used increasingly in the construction of houses, store fronts, office buildings and factories. It is not a merger of the two concerns, but the creation of a joint corporation for the advancement of glass in the building industry and will not affect the diversified interests of either company in their other fields of glass manufacturing.

Harry S. Wherrett is president of the new organization, as well as of Pittsburgh Plate

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Glass Company. Armory Houghton, president of Corning Plate Glass Works is chairman of the board of the new company.

District Heating Is Subject for Prize Competition

THE National District Heating Association has announced a prize competition for the best papers on the subjects of generation, distribution, or sale of district steam heating service. Only members who have, or will have joined between January 1, 1934, and May 1, 1937, closing date for the competition, will be eligible to compete for the first prize of $50; second, $25; third, $10; and fourth, one year's free membership.

C. H. B. Hotchkiss, editor, *Heating & Ventilating;* M. D. Engle, president N.D.H.A.; and R. M. Nee, chairman, membership committee, will judge the competition. The winners will be announced at the annual convention of the association, Detroit, Michigan, May 25-28, 1937.

Information and rules of the competition may be obtained from the National District Heating Association, Engineers Club Building, 1317 Spruce street, Philadelphia, Pa.

Cities Service Plans Large Expenditure

CITIES Service Company plans to spend $42,000,000 for new construction and improvements during 1937, according to a recent announcement.

Of this amount, $24,000,000 has been appropriated for the oil division, $16,000,000 of which will be expended for pipe and storage facilities in new development work, and for rentals and purchasing leases; and $8,000,000 will go into the construction of new gasoline plants, improvements in refineries, service station expansion, and the acquisition of new retail outlets.

Of the $18,000,000 remaining, $11,000,000 has been allotted to public utility subsidiaries engaged in the electric light and power field, in extending rural electric lines, increasing generating facilities, and in routine urban extensions and replacements; and $7,000,000 has been allotted to the natural gas subsidiaries of the company for improvements and expansions.

General Electric Forms New Appliance Sales Section

THE formation of a new sales section for miscellaneous household appliances has been announced by D. C. Spooner, Jr., manager of the General Electric household appliance division. It will be responsible for certain devices developed from time to time by the G-E research laboratory and engineering groups for which there is no immediate large developed domestic market. In the new section such appliances will be given individual attention and a full opportunity for market exploitation.

The General Electric comforter and floor polisher have already been assigned to this section. Roy W. Johnson has been appointed sales manager.

Electric Heat Applied to Needs of Process Industries

COMMERCIAL departments of the public utilities will be interested in a new line of electric heating equipment which is being announced by the Elliott Company, Pittsburgh, Pa., well known manufacturers of power plant equipment. The company's Heat Transfer Department of Jeannette, Pa., handles the design and sale of the new equipment.

This line of electric heaters is designed for the special requirements of the process industries, for use particularly in the higher temperature ranges. The heaters will usually show substantial overall savings when compared to direct-fire or other high-temperature and heating means. The use of electric heat results in savings in operating and maintenance labor, reduction of spoilage and waste, improvement in quality and uniformity resulting in increased value of the product, elimination of fire hazards, improved working conditions, etc.

Of particular interest are the Elliott automatic indirect electric heaters which circulate hot oil or diphenyl vapor, obtaining temperatures from 200 to 800 degrees F. These can be connected to one or more jacketed kettles or other processing equipment, which may have been using steam. With the Elliott system, higher temperatures can be obtained, thus speeding up operations, obtaining better reactions, or making possible new or improved products.

Other items in the line are automatic electric tubular heaters for super-heating steam or other fluids to any temperatures, continuous systems employing electric heat for the distillation of fatty acids, for fat splitting, deodorizing edible oils, and the treatment of Tung and other oils, also special electric heating equipment to meet specific requirements.

Descriptive bulletins describing this equipment are available.

For Your Information

GOGGLES. Safe Practices Pamphlet No. 14. Published by National Safety Council, Inc., 20 North Wacker Drive, Chicago, Illinois. 8 pages, 8½ by 11 inches, 10 illustrations. 25 cents per copy, quantity discounts upon request.

This pamphlet is based on the accident prevention experience of a number of employers. However, it should not be assumed that every acceptable safety procedure is contained therein. The pamphlet should not be confused with Federal, state or insurance requirements, nor with national safety codes.

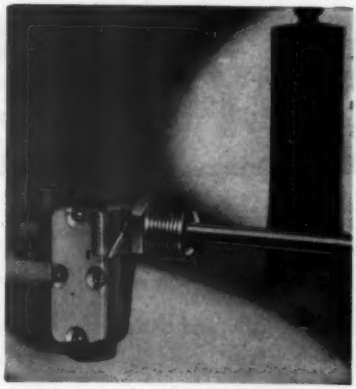
The questions of when goggles should be worn and the kind of goggles that should be worn, as well as the problem of getting men to wear them, are dealt with in detail.

AND A WATER HEATER IS NO BETTER THAN ITS *Thermostat!*

AS THE lens is to the camera, so is the thermostat to an Automatic Water Heater. Upon its reliable action depends the success of the heaters you sell, and upon that success depends an important part of your revenue.

Why take unnecessary chances? Put your faith in TITAN Snap Action Thermostats. They have "Delivered" for years under the most diversified conditions, with all types of gas. They are sensitive, rugged and trouble-free. They are furnished on the majority of Automatic Storage Heaters approved by the American Gas Association.

"TITAN" on a thermostat means long, service-free operation. Specify TITAN Controls with confidence. They are available for any size of heater, from the smallest to the largest.



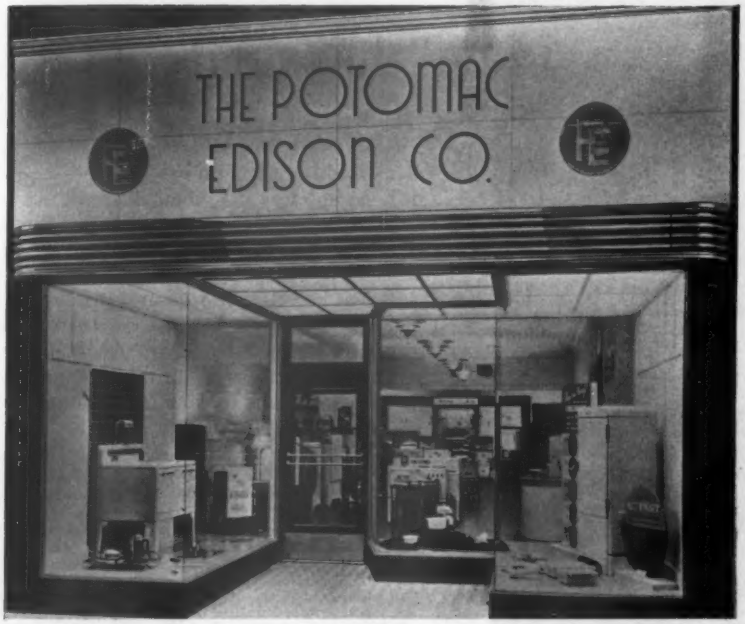
THE TITAN VALVE & MANUFACTURING COMPANY

THERMOSTATS «» SAFETY PILOTS «» RELIEF VALVES

9913 Elk Avenue **Cleveland, Ohio**

TITAN WATER HEATER CONTROLS

The sale of Modern Lighting for Modern Store Fronts should *begin at Home!*



Here's how Architect Geo. F. Sansbury and the Potomac Edison Company convince the merchants and property owners of Cumberland, Md., of the value of brightly lighted stores.

A modern store front demands modern illumination. And modern illumination means a heavier lighting load. There's a natural tie-up if there ever was one . . . new Pittco Store Fronts and modern lighting.

But to take best advantage of this tie-up . . . to convince prospects in your community of the soundness of store front modernization with better lighting . . . there's nothing more valuable than an actual example . . . on your own show rooms . . . of just what you mean.

You talk to a merchant . . . tell him the need for modern merchandising methods . . . plug away on the idea of a new store front with better lighting. And to clinch the argument, you say "Look at our own quarters down the street. There's a new front . . . illuminated in the modern manner. We practice what we preach . . . because we know it means better business!"

Put a new Pittco Front on your utility show rooms. Make them an example of what you preach. And when the Pittco Store Front Caravan, sponsored by Pittsburgh Plate Glass Company, comes to your territory, don't miss it. It shows you numerous actual examples of modern store front lighting. It offers you an opportunity to cooperate with a promotional effort that leads directly to more business for you. Contact our local branch for data about the Caravan . . . and for any cooperation on store fronts you may need in your work.

Paint · PITTSBURGH · Glass
PLATE GLASS COMPANY

EVEREADY
TRADE MARK

INDUSTRIAL FLASHLIGHT

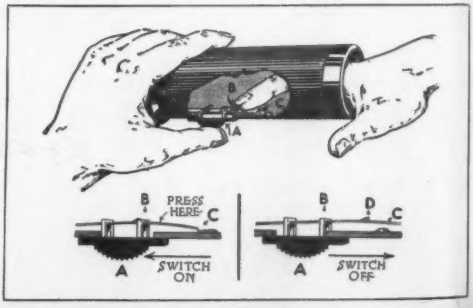
"Built for Rough Treatment"

The "Eveready" Industrial Flashlight is built for ROUGH treatment. The entire outer casing is made of heavy fibre reinforced inside by brass parts to help withstand severe service. The lens and lamp are protected by a special cushioning which softens the hardest impact. This flashlight has no exterior metal parts and it is completely insulated for working around "hot" wires, and therefore prevents shocks and short circuits. The casing will not dent and is not affected by oils, grease, gasoline, alcohol or other solvents and does not deteriorate with age.

The moulded slide switch is positive in operation and slides "on and off" easily. The whole assembly can be readily taken apart and put together without tools. Particles of grit cannot cause trouble.

TO REMOVE: Slide the switch "A" to the "on" position and hold it firmly against the tube with the thumb. Insert longest finger of right hand in tube and press brass contact strip "C" directly in front of lug "B". This pressure releases the latch and the strip will slide out.

TO REPLACE: Hold flashlight as shown and press the switch "A" in the "off" position, holding it firmly against the tube. Insert brass contact strip "C" with the small raised latch piece "D" on the top, Push it through the slot in the first lug "B". Press down on the slide to flatten the "bow". This pressure will lift the end so it may be pushed in through the second lug. Continue to push forward until a distinct click is heard. Then the switch is latched and properly assembled.



NATIONAL CARBON COMPANY, INC.

General Offices: **New York, N. Y.** • *Branches:* **Chicago, San Francisco**

Unit of Union Carbide UCC *and Carbon Corporation*

Economy

begins at *Sparrow's Point*

Longer-lasting money-saving Strand and Guard Fence comes from our Sparrow's Point plant. Williamsport men and machines employed there are wholly devoted to faultless production, turning out flawless wire units . . . *and nothing else.* Specialists in this line that means so much to profitable utility operation, they are your warranty of longer service.

and comes to you with

Williamsport

WIRE ROPE

A highly specialized plant—supplying perfect conditions to make a perfect product—indicates the careful regard for detail so true of Williamsport, in design and application as well as production. Williamsport Wire Rope for every need is fabricated independently and entirely, from rods to reels in our factories. We urge you to install a Williamsport rope selected for the individual needs of your job. And we are confident that you will enjoy its economy through longer, more uniform efficient service.

Send for our current handbook.

WILLIAMSPORT WIRE ROPE CO.

122 SO. MICHIGAN AVE., CHICAGO—WILLIAMSPORT, PA.
Offices in All Principal Cities

Joslyn Manufacturing & Supply Co. 20. N. WACKER DRIVE, CHICAGO, ILL.
NATIONAL DISTRIBUTORS FOR WILLIAMSPORT STRAND

Business Success is also a "*MUST*"!

THE heftiest problem that harries the thoughtful American business man is *the responsibility to be successful.*

If he fails in that basic duty everything else in the business picture becomes academic detail.

You can't blink the fact—his success is a "must" for *your* sake, as well as his own.

Why? Because only a business that takes in more than it pays out can hope to keep going and meet payrolls.

And only a going business can support the flock of other businesses that depend on it for orders to keep *their* men and machines going.

Finally, only a successful business has the surplus money it takes to work out improvements in products and values which insure future jobs.

During depression, only those companies fortified by success are able to carry employes by dipping into reserves *built up during prosperous times.*

The extent to which American private enterprise *did* dip into reserves during 1930-34—totals by latest estimate some $26,600,000,000.

That's the amount paid out, over and above income, to keep plants going and men at work.

In other words, *industry voluntarily contributed more than twice what the Government spent for "priming the pump"*—not to mention the fact that business *earned* its money, whereas Government money comes from borrowing and taxes.

This shows in cold-turkey figures why business success is a "must."

So also does the illuminating fact that 40,000,000 stockholders and their dependents have a stake in and directly benefit from ownership in American business.

All of these people—all the millions of gainfully employed—all Americans including yourself, *no matter where you live, what your work or how you do it*—have not merely a casual but an acute meal-time interest in seeing business in this country go ahead!

Business Raises Living Standards

Only 35 years ago there was but one insurance policy-holder to ten people—today, every other person in America has a life insurance policy.

There were only 1000 radios in 1920—in 1935, the number of families with radios was 22,869,000.

In 1913, there was one bathtub to ten people in American towns and cities—fifteen years later there was one to every five people.

Thus have people enjoyed an increasing abundance of things in America, a business nation.

This advertisement is published by

NATION'S BUSINESS

—a magazine devoted to interpreting business to itself, and bringing about a better understanding of the intricate relations of government and business. The facts published here are indicative of its spirit and contents. Write for sample copy to NATION'S BUSINESS, WASHINGTON, D. C.

INDEX TO ADVERTISERS

(Concluded on Page 80)

INDEX TO ADVERTISERS (Concluded)

PROFESSIONAL DIRECTORY

• This page is reserved for engineers and engineering concerns especially equipped by experience and trained personnel to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction. « «

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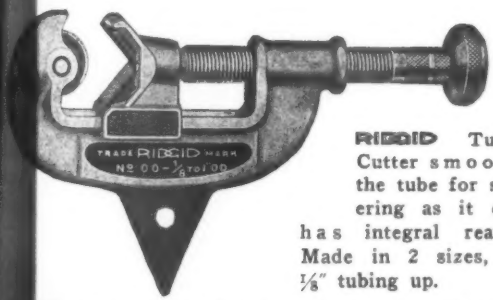
THAT'S WHAT GIVES YOU MANY MORE QUICK CLEAN CUTS

Practically without Burr

The RIDGID thin Tool-Steel Cutter Wheel

Not cut out of bar stock, this RIDGID Cutter Wheel is coined from tool steel sheets, hammered, heat-treated and cast into a solid steel-bearing hub. This exclusive patented wheel gives you a durable cutting edge that means easier cuts—and many more of them.

The cutter housing is steel re-inforced—guaranteed not to warp or break. The blade wheel cuts true.

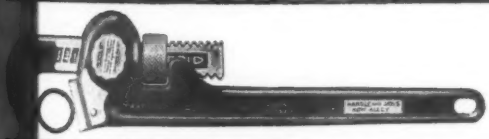


RIDGID Tubing Cutter smooths the tube for soldering as it cuts, has integral reamer. Made in 2 sizes, for ⅛" tubing up.

RIDGID Heavy-Duty Cutter Wheel—for tough jobs and long service.

THE RIDGE TOOL CO., ELYRIA, OHIO, U. S. A.

RIDGID PIPE TOOLS



If you want to reduce your wrench repairs fully 75%, buy RIDGID Pipe Wrenches with unconditionally guaranteed housings.

WHY More Than 300 Type "B" Pulverizers Have Been Bought for Direct Firing!

B&W Pulverizers having a total capacity of over 2600 tons of coal per hour have been bought in the United States alone for the direct firing of boilers. All these pulverizers are of the same type and many of them have been in service for periods of one to seven years and have proved conclusively that they—

Can be depended upon to give reliable service,
Can handle coal of any grade or moisture,
Respond readily to load changes,
Maintain fineness,
Maintain capacity,
Provide a rich starting mixture,
Are not damaged by tramp iron,
Are adapted to fully automatic operation.

These and other reasons why the Type B Pulverizer is the logical choice for direct-firing pulverized-coal systems are fully discussed in Bulletin G-19, which also presents the many advantages of the B&W Direct-Firing System. For your copy simply return the coupon.

THE BABCOCK & WILCOX COMPANY
85 LIBERTY STREET, NEW YORK, N. Y.

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Please send ... without obligation ... copy of the "B&W Direct-Firing System"
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